TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

DUVAL JEWELRY COMPANY OF MIAMI, INC., DUVAL JEWELRY COMPANY OF [illegible], INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE [illegible] CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 28, 1957

CERTIORARI GRANTED DECEMBER 16, 1957

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TRANSCRIPT OF RECORD

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16180

NATIONAL LABOR RELATIONS BOARD,
Appellant,

versus

DUVAL JEWELRY COMPANY OF MIAMI, INC., ET AL.,
Appellees.

Appeal from the United States District Court for the
Southern District of Florida

APPELLANT'S DESIGNATION
AS TO PRINTING RECORD - FILED JUNE 30, 1956.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16180

National Labor Relations Board,
Appellant

versus

Duval Jewelry Company of Miami, Inc., Duval Jewelry Company, Jenkins and Sons, Inc., Jenkins Jewelry Company, and Oliver A. Jenkins,
Appellees

On Appeal from An Order of the United States District Court For The Southern District of Florida, Miami Division, Quashing Subpenas Issued by the National Labor Relations Board

The National Labor Relations Board, appellant herein, pursuant to Rule 23 of the Rules of this Court, hereby designates for printing the following portions of the record on appeal certified to this Court by the Clerk of the District Court:

1. Petition To Enforce Subpoena, filed by the National Labor Relations Board in *N. L. R. B.* v. *Duval Jewelry Com-*

pany of Miami, Inc., Civil No. 6759-M, United States District Court for the Southern District of Florida, Miami Division, together with Exhibits 1 through 12, attached thereto.

2. Order to Show Cause, issued in Civil No. 6759-M.

3. Answer of Respondent in Civil No. 6759-M.

4. Petition to Enforce Subpoena in *N. L. R. B.* v. *Duval Jewelry Company*, Civil No. 6760-M, together with Exhibits 8 and 9, attached thereto, and a statement that Exhibits 1, 2, 3, 4, 5, 6, 7, 10, 11 and 12, attached thereto, are identical in content with corresponding exhibits attached to the petition in Civil No. 6759-M.

5. Order to Show Cause, issued in Civil No. 6760-M.

6. Answer of Respondent in Civil No. 6760-M.

7. Petition to Enforce Subpoena in *N. L. R. B.* v. *Jenkins and Sons, Inc.*, Civil No. 6761-M, together with Exhibits 8 and 9, attached thereto, and a statement that Exhibits 1, 2, 3, 4, 5, 6, 7, 10, 11 and 12, attached thereto, are identical in content with corresponding exhibits attached to the Petition in Civil No. 6759-M.

8. Order to Show Cause in Civil No. 6761-M.

9. Respondent's answer in Civil No. 6761-M.

10. Petition to Enforce Subpoena in *N. L. R. B.* v. *Jenkins Jewelry Company*, Civil No. 6762-M, together with Exhibits 6a, 8 and 9 attached thereto, and a statement that Exhibits

1, 2, 3, 4, 5, 6, 7, 10, 11 and 12, attached thereto, are identical in content with corresponding exhibits attached to the petition in Civil No. 6759-M.

11. Order to Show Cause in Civil No. 6762-M.

12. Respondent's answer in Civil No. 6762-M.

13. Petition to Enforce Subpoenas in *N. L. R. B.* v. *Oliver A. Jenkins*, Civil No. 6763-M, together with Exhibits 6b, 8, 8a, and 9 attached thereto, and a statement that Exhibits 1, 2, 3, 4, 5, 6, 7, 10, 11 and 12 attached thereto, are identical in content with the corresponding exhibits attached to the petition in Civil No. 6759-M.

14. Order to Show Cause in Civil No. 6763-M.

15. Answer of Respondent in Civil No. 6763-M.

16. Order Quashing Subpoenas, entered March 30, 1956.

17. Notice of Appeal.

(s) MARCEL MALLET-PREVOST
Marcel Mallet-Prevost
Assistant General Counsel

NATIONAL LABOR
RELATIONS BOARD

Dated at Washington, D. C.
this 24th day of May, 1956.
(SEAL)

CERTIFICATE OF SERVICE

In The United States Court of Appeals
For The Fifth Circuit

National Labor Relations Board,
Appellant,

v.

Duval Jewelry Company of Miami, Inc., Duval Jewelry Company, Jenkins and Sons, Inc., Jenkins Jewelry Company, and Oliver A. Jenkins,
Appellees.

The undersigned certifies that one copy of Appellant's designation of portions of the record to be printed in the above cause has this day been served by first-class mail upon the following counsel at the address listed below:

Messrs. Hamilton & Bowden
Att: Theo Hamilton, Esquire
Suite 401, Smith Building
Jacksonville 2, Florida

MARCEL MALLET-PREVOST
Marcel Mallet-Prevost
Assistant General Counsel
NATIONAL LABOR
RELATIONS BOARD

Dated at Washington, D. C.
this 24th day of May, 1956.

(SEAL)

PETITION TO ENFORCE SUBPOENA

On February 21, 1956 PETITION TO ENFORCE SUBPOENA was filed in the words and figures as follows:

In The District Court of The United States
For The Southern District of Florida
Miami Division

National Labor Relations Board,
An Administrative Agency of the Federal Government,
(Petitioner)
versus CIVIL NO. 6759-M

Duval Jewelry Company of Miami, Inc.
a Corporation
(Respondent)

Now comes the National Labor Relations Board, the Petitioner herein, and for this its petition to enforce a subpoena, states that;

1. Petitioner is an administrative agency of the United States Government created pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. V, Sec. 151, et seq.), hereinafter referred to as the Act.

2. Duval Jewelry Company of Miami, Inc., the Respondent herein, is a corporation duly organized and existing under the laws of the State of Florida, having its principal office at Jacksonville in said state.

3. The Court has jurisdiction of the subject matter of this proceeding under Section 11(2) of the Act [29 USCA 161 (2)] in that the inquiry in aid of which the subpoena hereby sought to be enforced was issued to the Respondent, is and was being carried on within this judicial district.

4. Pursuant to Section 6 of the Act Petitioner has adopted Rules and Regulations (Series 6, effective June 3, 1952) covering the conduct of its operations, which have been duly published in the Federal Register (17 F.R. 4982) as provided for in the Administrative Procedure Act (5 U.S.C. 1002), which Rules and Regulations will be hereinafter referred to as the Rules. Under Section 44 U.S.C. 307 judicial notice may be taken of the Rules.

5. Now and at all times material to the issues herein there is, and was pending before the Petitioner, under Section 9 (c) of the Act, a representation proceeding formerly entitled

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"In the matter of

Duval Jewelry Company of Miami, Inc.
(Employer)
and
Case No. 10-RC-3333

Local 1625, Retail Clerks International Association, AFL
(Petitioner)"

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which was instituted on November 22, 1955, on which date local 1625 Retail Clerks International Association, AFL,

hereinafter referred to as the Union, filed a representation petition in the Petitioner's Tenth Regional Office, and the title to which said proceeding was thereafter changed to

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"In the Matter of

Duval Jewelry Company, and/or Duval Jewelry Company of Miami, Inc., and/or Jenkins & Sons, Inc.; and/or Jenkins Jewelry Company[1]
(Employers)

and Case No. 10-RC-3333

Retail Clerks International Association, Local No. 1625. AFL-CIO
(Petitioner)

---

[1]An amended petition was filed herein on 1-4-56 to add as an employer Jenkins & Sons, Inc., Jenkins Jewelry Company and Duval Jewelry Company of Miami, Inc."

when the Union filed a first amended representation petition therein on January 4, 1956. A copy of each of said representation petitions marked Exhibits "1" and "2" respectively are hereto attached and hereby made a part hereof.

6. On November 28, 1955, Petitioner issued and served on the parties, its Notice of Representation Hearing in said proceeding in order to investigate the question as to the representation of employees which was raised by the original representation petition above-described, notifying the

parties to said proceeding that a hearing would be held therein on December 5, 1955, a copy of which said Notice of Representation Hearing, marked Exhibit "3", is likewise hereto attached and hereby made a part hereof.

7. On December 2, 1955, Petitioner rescheduled the hearing in said proceeding to December 20, 1955, by its Order Rescheduling Hearing, which was duly served on said parties and a copy of which, marked Exhibit "4", is likewise hereto attached, and hereby made a part hereof.

8. On January 4, 1956, the Petitioner issued and served on the parties its Amended Notice of Representation Hearing in said proceeding and also served on each of said parties a copy of the first amended representation petition theretofore filed by the union, whereby the parties were notified of the amendments to said original representation petition, and that the hearing would be held on January 10, 1956, a copy of said Amended Notice of Representation Hearing, marked Exhibit "5", is likewise hereto attached and hereby made a part hereof.

9. On December 30, 1955, as provided for in Section 11(1) of the Act and by Section 102.31 (a) of the Rules, and at the written request of counsel for the Petitioner's Regional Director for said Region, the Petitioner issued its subpoena duces tecum No. B-25985 directed to the Respondent herein, requiring its attendance and the production of certain of its records at the hearing in said proceeding which was then scheduled for January 10, 1956, or in lieu of appearing and producing said records at the hearing to submit a written statement giving the information sought to be subpoenaed. Said subpoena was duly served upon the

Respondent on January 3, 1956. A true copy of said written request and of the document designating counsel for said Regional Director, marked Exhibits "6" and "7" respectively, are likewise hereto attached and hereby made a part hereof. A true copy of the subpoena duces tecum, together with the United States Marshal's return of service thereof, marked Exhibit "8" is likewise hereto attached and hereby made a part hereof.

10. On January 9, 1956, the Respondent filed its timely petition to revoke the subpoena above-described, and for permission to argue orally and to submit briefs in support of said petition to revoke. A true copy of said petition to revoke, marked Exhibit "9", is likewise hereto attached and hereby made a part hereof.

11. On January 9, 1956, the representation hearing in said proceeding was postponed to February 2, 1956, by a written order duly served on the parties, a true copy of which, marked Exhibit "10", is likewise hereto attached and hereby made a part hereof.

12. On January 9, 1956, the Petitioner's hearing Officer, before whom said proceeding was then pending, granted, by telegram, respondent's request for oral argument and for permission to file briefs in support of its said petition to revoke. A true copy of said telegram marked Exhibit "11" is likewise hereto attached and hereby made a part hereof.

13. On January 26, 1956, the Hearing Officer denied the Respondent's said petition to revoke by a telegraphic order, a true copy of which, marked Exhibit "12", is likewise hereto attached and hereby made a part hereof.

14. On February 2, 1956, the Respondent appeared at said hearing, by its counsel, and refused to respond to said subpoena or to submit the written statement giving the information sought to be subpoenaed.

15. The information sought to be obtained by said subpoena was necessary and relevant to the said representation proceeding in order to determine the extent to which the Respondent's business operations were, either carried on in interstate commerce, or effected such commerce, and to determine its relationship to the other Employers named in said first amended representation petition, so that Petitioner could determine if it will assert its jurisdiction over the Respondent in said representation proceeding.

16. The refusal of the Respondent to produce the records described in said subpoena, or to submit a written statement in lieu of producing the same, constitutes contumacious conduct within the purview of Section 11(2) of the Act, and by thus impeding the Petitioner in the investigation of said representation proceeding now pending, before it, the Respondent has prevented and is preventing the Petitioner from carrying on its duties and functions under the Act.

WHEREFORE, Petitioner, the National Labor Relations Board, respectfully prays:

(a) That an order to show cause issues forthwith directing the Respondent to appear before this Court on a day certain to be fixed in said order, and to show cause, if any there be, why an order should not issue directing it to appear before Petitioner's Hearing Of-

ficer, at such time and place as he may designate, and there produce the records described in said subpoena, and give testimony and answer any and all questions relevant and material to the matter under investigation and in question in said representation proceeding;

(b) That upon the return of said order to show cause, and order issue requiring the Respondent to appear before said Hearing Officer, at a time and place to be fixed by him, and there produce the records described in said subpoena, and give testimony and answer any and all questions relevant and material to the matter under investigation and in question in said representation proceeding; and

(c) that Petitioner have such other and further relief as may be necessary and proper.

NATIONAL LABOR
RELATIONS BOARD, Petitioner
By Theophil C. Kammholz
General Counsel

/s/ Lloyd R. Fraker
Lloyd R. Fraker,
Chief Law Officer
Tenth Region
National Labor Relations Board
528 Peachtree-Seventh Building
Atlanta 23, Georgia

/s/ Allen Sinsheimer, Jr.
Allen Sinsheimer, Jr., Attorney
Tenth Region
National Labor Relations Board
Croton Hotel
7326 Collins Avenue
Miami Beach, Florida

EXHIBIT "1"

PETITION

When this Petition is filed by a labor organization or by an individual or group acting in its behalf, the Petition will not be processed unless the labor organization and any national or international of which it is an affiliate or constituent unit have complied with Section 9 (f), (g), and (h) of the National Labor Relations Act.

INSTRUCTIONS. — Submit an original and four (4) copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.

If more space is required for any one item, attach additional sheets, numbering item accordingly.

ATTACHMENTS REQUIRED. — Except when this Petition is filed by an employer under section 9 (c) (1) (b) of the Act, there must be submitted with the Petition proof of interest in the form of dated authorization or membership application cards, or other documentary evidence signed

by employees, together with an alphabetical list of their names.

DO NOT WRITE IN THIS SPACE

Case No.
10-Rc-3333

Date filed
11-22-55

Compliance Status Checked by:
/s/ E.F.

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority:

1. PURPOSE OF THIS PETITION (check only the one box which is appropriate)

A. (X) RC —
CERTIFICATION OF REPRESENTATIVES (INDIVIDUAL, GROUP, LABOR ORGANIZATION). — A substantial number of employees wish to be represented for purposes of collective bargaining, pursuant to Section 9 (a) and (c) of the act.

B. ( ) RM —
REPRESENTATION (EMPLOYER). — One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner as defined in section 9(a) of the act.

C. ( ) RD —

DECERTIFICATION. — A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative as defined in section 9(a) of the act.

D. ( ) UD —

WITHDRAWAL OF UNION SHOP AUTHORITY. — Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.

2. NAME OF EMPLOYER
Duval Jewelry Company

EMPLOYER REPRESENTATIVE TO CONTACT
PHONE NO.
35331

3. ADDRESS(ES) OF ESTABLISHMENT(S) INVOLVED (Street and number, city, zone and State)
226 East Flagler Street, Miami, Florida

4a. TYPE OF ESTABLISHMENT (Factory, mine, wholesaler, etc.)
Retail Jewelry Store

4b. IDENTIFY PRINCIPAL PRODUCT OR SERVICE
Retail Jewelry

5. DESCRIPTION OF UNIT INVOLVED (If more space is needed, continue on another sheet)

Included All employees working in the company store located at the above address.

Excluded Store Manager, Supervisors, Casual Peak-Season Employees, Guards, Watchmen, Professional Employees as defined in The Act.

6a. NUMBER OF EMPLOYEES IN UNIT
12

6b. IS THIS PETITION SUPPORTED BY 80% OR MORE OF THE EMPLOYEES IN THE UNIT?
(X) YES ( ) NO

(IF YOU HAVE CHECKED BOX 1 A (RC) ABOVE, CHECK AND COMPLETE EITHER ITEM 7A or 7B, WHICHEVER IS APPLICABLE)

7a. ( ) Request for recognition as Bargaining Representative was made on November 19th, 1955 and Employer declined recognition on or about No reply (If no reply received, so state)
(Month, day, year)

7b. ( ) Petitioner is currently recognized as Bargaining Representative and desires certification under the act.

8. RECOGNIZED OR CERTIFIED BARGAINING AGENT (IF THERE IS NONE, SO STATE)

NAME
None

ADDRESS

Affiliation

Date of Recognition or Certification

9. Date of Expiration or Current Contract, if any (Show month, day and year)
None

10. If you have Checked Box 1 D (UD) above, show here the date of Execution of Agreement Granting Union Shop (month, day and year)

11. PARTIES OR ORGANIZATIONS OTHER THAN PETITIONER WHICH HAVE CLAIMED RECOGNITION AS REPRESENTATIVES, AND OTHER UNIONS INTERESTED IN THE EMPLOYEES DESCRIBED IN ITEM 5 ABOVE (IF NONE, SO STATE)

NAME
None

AFFILIATION

ADDRESS

DATE OF CLAIM
(Required only if Petition is filed by Employer)

12. IF YOU HAVE CHECKED BOX 1 A (RC) above, list locals or other affiliates of Petitioner having or soliciting members among the employees in the unit involved;

or which will serve such employees in the event the Petitioner is certified as their representative (if none, so state)

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

Retail Clerks, International Association,
Local No. 1625, AFL
(Petitioner and affiliation (if any)

By /s/ Fred J. Khoury
(Signature of representative or person filing petition)

Secretary-Treasurer
(Title, if any)

Address

Fred J. Khoury
732 West Flagler Street, Miami, Florida
(Street and number, city, zone and state)

24947
Telephone number

WILLFULLY FALSE STATEMENT ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 1001).

EXHIBIT "2"

PETITION

When this Petition is filed by a labor organization or by an individual or group acting in its behalf, the Petition will not be processed unless the labor organization and any national or international of which it is an affiliate or constituent unit have complied with Section 9 (f), (g), and (h) of the National Labor Relations Act.

INSTRUCTIONS — Submit an original and four (4) copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.

If more space is required for any one item, attach additional sheets, numbering item accordingly.

ATTACHMENTS REQUIRED. — Except when this Petition is filed by an employer under section 9 (c) (1) (b) of the Act, there must be submitted with the Petition proof of interest in the form of dated authorization or membership application cards, or other documentary evidence signed by employees, together with an alphabetical list of their names.

DO NOT WRITE IN THIS SPACE

Case No.
10*RC-3333

Date filed
1-4-56

Compliance Status Checked by:
/s/ E.F.

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority:

1. PURPOSE OF THIS PETITION (check only the one box which is appropriate)

A. (X) RC —
CERTIFICATION OF REPRESENTATIVES (INDIVIDUAL, GROUP, LABOR ORGANIZATION). — A substantial number of employees wish to be represented for purposes of collective bargaining, pursuant to Section 9 (a) and (c) of the act.

B. ( ) RM —
REPRESENTATION (EMPLOYER). — One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner as defined in section 9(a) of the act.

C. ( ) RD —
DECERTIFICATION. — A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative as defined in section 9(a) of the act.

D. ( ) UD —
WITHDRAWAL OF UNION SHOP AUTHORITY. — Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and

a labor organization desire that such authority be rescinded.

2. NAME OF EMPLOYER
Duval Jewelry Company, and/or Duval Jewelry Company of Miami, Inc., and/or Jenkins & Sons, Inc.; and/or Jenkins Jewelry Company.

EMPLOYER REPRESENTATIVE TO CONTACT

PHONE NO.
35331

3. ADDRESS(ES) OF ESTABLISHMENT(S) INVOLVED (Street and number, city, zone and State)
226 East Flagler Street, Miami, Florida

4a. TYPE OF ESTABLISHMENT (Factory, mine, wholesaler, etc.)
Retail Jewelry Store

4b. IDENTIFY PRINCIPAL PRODUCT OR SERVICE
Retail Jewelry

5. DESCRIPTION OF UNIT INVOLVED (If more space is needed, continue on another sheet)

Included All employees working in the company store located at the above address.

Excluded Store Manager, Supervisors, Casual Peak-Season Employees, Guards, Watchmen, Professional Employees as defined in The Act.

6a. NUMBER OF EMPLOYEES IN UNIT
12

6b. IS THIS PETITION SUPPORTED BY 30% OR MORE OF THE EMPLOYEES IN THE UNIT?
(X) YES - ( ) NO

(IF YOU HAVE CHECKED BOX 1A (RC) ABOVE, CHECK AND COMPLETE EITHER ITEM 7A or 7B, WHICHEVER IS APPLICABLE)

7a. ( ) Request for recognition as Bargaining Representative was made on November 19th, 1955 and Employer declined recognition on or about No reply (If no reply received, so state) (Month, day, year)

7b. ( ) Petitioner is currently recognized as Bargaining Representative and desires certification under the act.

8. RECOGNIZED OR CERTIFIED BARGAINING AGENT (IF THERE IS NONE, SO STATE)

NAME
None

ADDRESS

Affiliation

Date of Recognition or Certification

9. Date of Expiration or Current Contract, if any
(Show month. day and year)
None

10. If you have Checked Box 1 D (UD) above, show here the date of Execution of Agreement Granting Union Shop (month, day and year)

11. PARTIES OR ORGANIZATIONS OTHER THAN PETITIONER WHICH HAVE CLAIMED RECOGNITION AS REPRESENTATIVES, AND OTHER UNIONS INTERESTED IN THE EMPLOYEES DESCRIBED IN ITEM 5 ABOVE (IF NONE, SO STATE)

NAME
None

AFFILIATION

ADDRESS

DATE OF CLAIM
(Required only if Petition is filed by Employer)

12. IF YOU HAVE CHECKED BOX 1 A (RC) above, list locals or other affiliates of Petitioner having or soliciting members among the employees in the unit involved; or which will serve such employees in the event the Petitioner is certified as their representative (if none, so state)

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

Retail Clerks International Association,
Local No. 1625, AFL-CIO
(Petitioner and affiliation, if any)

By /s/ Fred J. Khoury
(Signature of representative or person filing petition)

Secretary-Treasurer
(Title, if any)

Address

Fred J. Khoury
732 West Flagler Street, Miami, Florida
(Street and number, city, zone and state

Franklin 4-4947
Telephone number

WILLFULLY FALSE STATEMENT ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 1001)

EXHIBIT "3"

NOTICE OF REPRESENTATION HEARING

United States of America
Before The National Labor Relations Board
Tenth Region

In the Matter of

Duval Jewelry Company of Miami, Inc.
(Employer)

and Case No. 1-RC-3333

Local 1625, Retail Clerks International Association, AFL
(Petitioner)

The Petitioner, above named, having heretofore filed a Petition pursuant to section 9(c) of the National Labor Relations Act, 61 Stat. 136, copy of which Petition is hereby attached, and it appearing that a question affecting commerce has arisen concerning the representation of employees described by such Petition,

YOU ARE HEREBY NOTIFIED that, pursuant to section 9(c) of the Act, on the 5th day of December, 1955, at ten o'clock in the morning, Eastern Standard Time, in the Dade County Courthouse, Miami, Florida, a hearing will be conducted before a hearing officer of the National Labor Relations Board upon the question of representation affecting commerce which has arisen, at which time and place the

parties will have the right to appear in person or otherwise, and give testimony.

IN WITNESS WHEREOF, the General Counsel of the National Labor Relations Board, on behalf of the Board, has caused this Notice of Representation Hearing to be signed by the Regional Director for the Tenth Region on this 28th day of November, 1955.

/s/ John W. Thomas
John W. Thomas,
Acting Regional Director
528 Peachtree-Seventh Building
Atlanta, Georgia

EXHIBIT "4"

ORDER RESCHEDULING HEARING

United States of America
Before The National Labor Relations Board
Tenth Region

In the Matter of

Duval Jewelry Company of Miami, Inc.
(Employer)

and Case No. 10-RC-3333.

Local 1625m Retail Clerks International Association, AFL
(Petitioner)

IT IS HEREBY ORDERED that the hearing in the above-entitled matter be and the same hereby is rescheduled from January 10, 1956, to February 2, 1956, at the same hour and place.

DATED at Atlanta, Georgia, this 9th day of January, 1956.

John C. Getreu, Regional Director
National Labor Relations Board
Atlanta, Georgia

EXHIBIT "5"

AMENDED NOTICE OF REPRESENTATION HEARING

United States of America
Before The National Labor Relations Board
Tenth Region

In the Matter of

Duval Jewelry Company, and/or Duval Jewelry Company of Miami, Inc.; and/or Jenkins & Sons, Inc.; and/or Jenkins Jewelry Company[1]

(Employers)

and Case No. 10-RC-3333

Retail Clerks International Association, Local No. 1625, AFL-CIO

(Petitioner)

The Petitioner, above named, having heretofore filed an Amended Petition pursuant to section 9(c) of the National Labor Relations Act, 61 Stat. 136, copy of which Amended Petition is hereto attached, and it appearing that a question affecting commerce has arisen concerning the representation of employees described by such Petition,

YOU ARE HEREBY NOTIFIED that, pursuant to section 9(c) of the Act, on the 10th day of January, 1956, at ten o'clock in the morning, Eastern Standard Time, in the

---

[1]An amended petition was filed herein on 1-4-56 to add as an employer Jenkins & Sons, Inc., Jenkins Jewelry Company and Duval Jewelry Company of Miami, Inc.

plumbing Industry Program Building, 2526 W. Flagler Street, Miami, Florida, a hearing will be conducted before a hearing officer of the National Labor Relations Board upon the question of representation affecting commerce which has arisen, at which time and place the parties will have the right to appear in person or otherwise, and give testimony.

IN WITNESS WHEREOF, the General Counsel of the National Labor Relations Board, on behalf of the Board, has caused this Notice of Representation Hearing to be signed by the Regional Director for the Tenth Region on this 4th day of January, 1956.

/s/ John C. Getreu
John C. Getreu, Regional Director
528 Peachtree-Seventh Building
Atlanta, Georgia

EXHIBIT "6"

REQUEST FOR SUBPENAS DUCES TECUM

John C. Getreu, Regional Director — December 30, 1955
Frank E. Hamilton, Jr., Acting Chief Law Officer
Duval Jewelry Company of Miami, Inc.
Case No. 10-RC-3333

I hereby request that Subpoenas Duces Tecum issue requiring Duval Jewelry Company of Miami, Inc., 34 W. Forsyth Street, Jacksonville, Florida, Duval Jewelry Company,

34 W. Forsyth Street, Jacksonville, Florida, Jenkins and Sons, Inc., 34 W. Forsyth Street, Jacksonville, Florida, and Oliver A. Jenkins, 34 W. Forsyth Street, Jacksonville, Florida, to produce the following records before the Hearing Officer of the National Labor Relations Board at the Plumbing Industry Program Building, 2526 W. Flagler Street, Miami, Florida, at 10:00 A.M. on January 10, 1956, in the matter of Duval Jewelry Company of Miami, Inc. and Local 1625, Retail Clerks International Association, AFL:

Duval Jewelry Company of Miami, Inc.
34 W. Forsyth Street, Jacksonville, Fla.

1. The books, records and other documents showing all purchases made by said Duval Jewelry Company of Miami, Inc. during the calendar year from January 1, 1955 through December 31, 1955 or during the last fiscal year of said corporation.

2. The corporate stock record books of said Duval Jewelry Company of Miami, Inc., showing all the present shareholders of record and the amount of shares issued to each.

Or in lieu of the foregoing a statement signed and certified to by a responsible official of said corporation setting forth:

1. The total dollar value of purchases made by said corporation during the calendar year from January 1, 1955, through December 31, 1955, or during its last fiscal year, the names of all persons from

whom purchases were made during said period, and the total dollar amount of purchases from each of said persons.

2. The names of all shareholders of said corporation and the number of shares held by each shareholder.

Duval Jewelry Company
34 W. Forsyth Street, Jacksonville, Fla.

1. The books, records and other documents showing all purchases made by said Duval Jewelry Company during the calendar year from January 1, 1955, through December 31, 1955, or during the last fiscal year of said corporation.

2. The books, records and other documents showing all purchases made by said Duval Jewelry Company during the calendar year from January 1, 1955, through December 31, 1955, or during the last fiscal year of said corporation, for or on behalf of each of the following named corporations:

Duval Jewelry Company of Coral Gables, Inc.
Duval Jewelry Company at Eighth and Main
Duval Jewelry Company of Tallahassee
Duval Jewelry Company of Deland
Duval Jewelry Company of Ocala
Duval Jewelry Company of Fort Lauderdale
Duval Jewelry Company of Daytona Beach
Duval Jewelry Company of Gainesville
Duval Jewelry Company of West Palm Beach, Inc.

Duval Jewelry Company of Miami, Inc.
Duval Jewelry Company of Orlando, Inc.
Duval Jewelry Company of Tampa, Inc.
Duval Jewelry Company of St. Petersburg, Inc.
Duval Jewelry Company at Five Points
Duval Jewelry Company at Colonial Plaza

3. The books, records and other documents showing all sales made by said Duval Jewelry Company during the calendar year from January 1, 1955 through December 31, 1955, or during the last fiscal year of said corporation to the following named corporations:

Duval Jewelry Company of Coral Gables, Inc.
etc. as listed in paragraph 2 above

4. The books, records, and other documents showing amount and extent of shares owned by said Duval Jewelry Company of each of the following-named corporations:

Duval Jewelry Company of Coral Gables, Inc.,
etc. as listed in paragraph 2 above.

or in lieu of the foregoing a statement signed and certified to by a responsible official of said corporation setting forth:

1. The total dollar value of purchases made by said Duval Jewelry Company during the calendar year January 1, 1955 through December 31, 1955, or during its last fiscal year. the names of all persons

from whom purchases were made during said period and the total dollar amount of purchases from each of said persons.

2. The total dollar value of purchases made by said Duval Jewelry Company during the calendar year January 1, 1955 through December 31, 1955, or during its last fiscal year for or on behalf of each of the following named corporations:

Duval Jewelry Company of Coral Gables, Inc.
etc. as listed in paragraph 2

The names of all persons from whom such purchases were made during said period and the total dollar amount of such purchases from each of said persons:

3. The total dollar value of all sales made by said Duval Jewelry Company during the calendar year from January 1, 1955 through December 31, 1955, or during the last fiscal year of said corporation to each of the following named corporations:

Duval Jewelry Company of Coral Gables, Inc.
etc. as listed in paragraph 2

4. The number of shares owned by said Duval Jewelry Company of each of the following named corporations, and the total number of shares issued by each of these corporations:

Duval Jewelry Company of Coral Gables, Inc. etc. as listed in paragraph 2

Jenkins and Sons, Inc.
34 West Forsyth Street, Jacksonville, Fla.

Same subpena duces tecum as Duval Jewelry Company with following differences:

1. Name Jenkins and Sons, Inc. to be in place of Duval Jewelry Company wherever it appears.

2. When copying list of Secretary of State, attached, all names thereon including Duval Jewelry Company are to be copied.

Oliver A. Jenkins
34 W. Forsyth Street
Jacksonville, Florida

1. All shares of stock and other evidences of beneficial interest which the aforesaid Oliver A. Jenkins owns in each of the following-named corporations:

1. Jenkins and Sons (name as telephoned in to Hamilton or Fraker) and then list all companies named on letter of Secretary of State attached.

or in lieu of producing the foregoing to produce a statement signed and certified to by said Oliver A. Jenkins setting forth (1) the number of shares of stock owned

by said Oliver A. Jenkins in each of the following named corporations:

1. Jenkins and Sons, Inc, and list all corporations named in Secretary of State's letter attached.

2. All other beneficial interest which said Oliver A. Jenkins has in each of the corporations listed aforesaid above.

— /s/ . FEH
F. E. H., Jr.

Approved:

/s/ John C. Getreu
Regional Director

December 30, 1955

P.S. The name Jenkins & Son, Inc. and Jenkins Jewelry Company should be added to the listing of corporations in paragraph 2 of the subpena to Duval Jewelry Company and to paragraph 2 of the "in lieu" section of the subpena to Duval Jewelry Company. Jenkins Jewelry Company should be added to the listing of companies in the subpena to Oliver A. Jenkins and in the "in lieu" section of the subpena to Oliver A. Jenkins.

EXHIBIT "7"

Office Memorandum — United States Government
DATE December 30, 1955

TO: Frank E. Hamilton, Jr., Attorney

FROM: John C. Getreu, Regional Director

SUBJECT: Duval Jewelry Company of Miami, Inc.
Case No. 10-RC-3333

You are hereby designated to act as my attorney in the above-styled case.

J. C. G.

EXHIBIT "8"

NLRB-31
(8-50)

SUBPENA DUCES TECUM

United States of America
National Labor Relations Board

To: Duval Jewelry Company of Miami, Inc.
34 W. Forsyth Street, Jacksonville, Florida

Request therefor having been duly made by FRANK E. HAMILTON, JR., Attorney, whose address is 50 Seventh St., N. E., Atlanta 23, Georgia.

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE a hearing officer of the National Labor Relations Board, at Plumbing Industry Program Building, 2526 W. Flagler Street in the City of Miami, Florida, on the 10th day of January, 1956, at 10:00 o'clock a.m. of that day, to testify in the Matter of Duval Jewelry Company of Miami, Inc. and Local 1625, Retail Clerks International Association, AFL — Case No. 10-RC-3333.

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence and documents:

1. The books, records and other documents showing all purchases made by said Duval Jewelry Company of Miami, Inc. during the calendar year from January 1, 1955 through December 31, 1955 or during the last fiscal year of said corporation.

2. The corporate stock record books of said Duval Jewelry Company of Miami, Inc., showing all the present shareholders of record and the amount of shares issued to each.

Or in lieu of the foregoing a statement signed and certified to by a responsible official of said corporation setting forth —

1. The total dollar value of purchases made by said corporation during the calendar year from January 1, 1955, through December 31, 1955, or during its last fiscal year, the names of all persons from whom purchases

were made during said period, and the total dollar amount of purchases from each of said persons.

2. The names of all shareholders of said corporation and the number of shares held by each shareholder.

B - 25985

In testimony whereof the seal of the National Labof Relations Board is affixed hereto, and the undersigned, a member of said National Labor Relations Board, has hereunto set his hand at ATLANTA 23, GEORGIA, this 30th day of December, 1955.

/s/ Abe Murdock

NOTICE TO WITNESSES — Witness fees for attendance, subsistence, and mileage under this subpena are payable by the party at whose request the witness is subpenaed. a Witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpena with the voucher when claiming reimbursement.

RETURN OF UNITED STATES MARSHAL SOUTHERN DISTRICT OF FLORIDA EXECUTED THIS WRIT AT Jacksonville, FLORIDA, ON January 3, 1956, BY SERVING THE WITHIN NAMED Duval Jewelry Co. of Miami, Inc., A CORPORATION BY DELIVERING A COPY OF THIS SUMMONS TOGETHER WITH COPY OF COMPLAINT TO L. K. Maxwell, AN OFFICER OF THE SAID Duval Jewelry Co. of Miami, Inc., A CORPORATION.

FEE	$ .50	THOMAS H. TRENT,
MILEAGE	.10	UNITED STATES MARSHAL
		BY:
TOTAL	.60	/s/ Jerry D. Dragones, Deputy.

EXHIBIT "9"

PETITION TO REVOKE SUBPENA

United States of America
Before The National Labor Relations Board

In the Matter of:

Duval Jewelry Company, and/or Duval Jewelry Company of Miami, Inc.; and/or Jenkins & Sons, Inc. and/or Jenkins Jewelry Company
(Employers)

and Case No. 10-RC-3333

Retail Clerks International Association, Local No. 1725 AFL-CIO
(Petitioner)

COMES NOW, Duval Jewelry Company of Miami, Inc., a corporation by its undersigned counsel, and petitions the National Labor Relations Board to revoke Subpena No. B-25985, addressed to said corporation, upon the following grounds, to-wit:

1. Said subpena is oppressive and unreasonable in that it requires the production of records or statements of all purchases made by said company for an entire year and the names of all current shareholders of said corporation on January 10, 1956, in a city 350 miles away from the offices of said company.

2. Said subpena seeks evidence which is immaterial and irrelevant to any proper issue in the above styled cause.

3. Duval Jewelry Company of Miami, Inc. is not subject to the jurisdiction of the National Labor Relations Board.

4. It does not appear that the said subpena was duly and properly issued according to law.

5. It does not appear that the said subpena was duly and properly issued according to the Rules and Regulations of the National Labor Relations Board.

6. Said subpena seeks evidence which does not relate to any matter under investigation or in question in the above styled cause.

7. The National Labor Relations Board has no jurisdiction in this cause.

8. Duval Jewelry Company of Miami, Inc. is not the employer of any employees involved in this cause.

9. There is no cause pending before the National Labor Relations Board entitled "in the Matter of Duval Jewelry Company of Miami, Inc. and Local 1625, Retail Clerks International Association, AFL, Case No. 10 - RC - 3333" as stated in said subpena.

Petitioner hereby requests opportunity, when reasonable notice, to orally argue this petition and any answer thereto and any issues involved herein, and thereafter the opportunity to file a written brief upon said issues.

RESPECTFULLY SUBMITTED this 7th day of January, 1956.

HAMILTON & BOWDEN
By /s/ Theo Hamilton
(Theo Hamilton)
Attorneys for said Petitioner

Address of Counsel:
Hamilton & Bowden
Suite 401, Smith Building
Jacksonville 2, Florida

CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of January, 1956, mailed the foregoing Petition to Revoke Subpena to:

National Labor Relations Board
Washington, D. C.

Allen Sinsheimer, Jr., Esq.
Hearing Officer
National Labor Relations Board,
Tenth Region
50 Seventh Street, N. E.
Atlanta 23, Georgia

/s/ Theo Hamilton
(Theo Hamilton)

EXHIBIT "10"

ORDER RESCHEDULING HEARING

United States of America
Before The National Labor Relations Board
Tenth Region

In the Matter of

Duval Jewelry Company of Miami, Inc.
(Employer)

and Case No. 10-RC-3333

Local 1625, Retail Clerks International Association, AFL
(Petitioner)

IT IS HEREBY ORDERED that the hearing in the above-entitled matter be and the same hereby is rescheduled from December 5, 1955 to December 20, 1955, at the same hour and place.

DATED at Atlanta, Georgia, this 2nd day of December, 1955.

/s/ Lloyd R. Fraker
Lloyd R. Fraker,
Acting Regional Director
National Labor Relations Board
Atlanta, Georgia

EXHIBIT "11"

TELEGRAM

NLRB - Atlanta
LRF/eb
1-9-56

DUVAL JEWELRY COMPANY OF MIAMI, INC.
226 E. FLAGLER STREET
MIAMI, FLORIDA

LOCAL 1625, RETAIL CLERKS INTERNATIONAL
ASSOCIATION, AFL-CIO
732 WEST FLAGLER ST.
MIAMI, FLORIDA

DUVAL JEWELRY COMPANY
34 W. FORSYTH STREET
JACKSONVILLE, FLORIDA

JENKINS AND SONS, INC.
34 W. FORSYTH STREET
JACKSONVILLE, FLORIDA

JENKINS JEWELRY COMPANY
34 W. FORSYTH STREET
JACKSONVILLE, FLORIDA

MR. THEO. HAMILTON, ATTORNEY
401 SMITH BUILDING
JACKSONVILLE, FLORIDA

RE: DUVAL JEWELRY COMPANY OF MIAMI, INC.,
ET AL., 10RC-3333. THE REQUESTS OF COUNSEL FOR

THE EMPLOYER TO SUBMIT A BRIEF AND FOR PERMISSION TO ARGUE ORALLY IN SUPPORT OF ITS MOTIONS TO REVOKE SUBPENAS HEREIN, ARE HEREBY GRANTED. BRIEFS, EITHER TYPEWRITTEN OR OTHERWISE DUPLICATED, SHALL BE SUBMITTED TO THE UNDERSIGNED HEARING OFFICER ON OR BEFORE JANUARY 17, 1956, AT THE CROTON HOTEL, 73RD AND COLLINS STREETS, MIAMI BEACH, FLORIDA, AND ORAL ARGUMENT SHALL BE PRESENTED BEFORE ME AS SUCH HEARING OFFICER AT 2:00 O'CLOCK P.M., EASTERN STANDARD TIME, ON JANUARY 19, 1956, AT THE PLUMBING INDUSTRY PROGRAM BUILDING, 2526 W. FLAGLER STREET, AT MIAMI, FLORIDA.

/s/ Allen Sinsheimer, Jr.
ALLEN SINSHEIMER, JR.
HEARING OFFICER

EXHIBIT "12"

TELEGRAM

NLRB - Atlanta LRF - eb
1-26-56

DUVAL JEWELRY COMPANY OF MIAMI, INC.
226 E. FLAGLER ST.
MIAMI, FLORIDA

LOCAL 1625, RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO
732 WEST FLAGLER STREET
MIAMI, FLORIDA

DUVAL JEWELRY COMPANY
34 W. FORSYTH STREET
JACKSONVILLE, FLORIDA

JENKINS AND SONS, INC.
34 W. FORSYTH STREET
JACKSONVILLE, FLORIDA

JENKINS JEWELRY COMPANY
34 W. FORSYTH STREET
JACKSONVILLE, FLORIDA

MR. THEO HAMILTON, ATTORNEY
401 SMITH BUILDING
JACKSONVILLE, FLORIDA

RE: DUVAL JEWELRY COMPANY OF MIAMI, INC., ET AL., 10RC-3333. NO BRIEF HAVING BEEN RECEIVED AND THE PETITIONS TO REVOKE SUPPOENAS NO. B-25988 TO JENKINS JEWELRY COMPANY, B-25986 TO DUVAL JEWELRY COMPANY, B-25987 TO JENKINS & SONS, INC., B-25985 TO DUVAL JEWELRY COMPANY OF MIAMI, INC., B-25989 TO OLIVER A. JENKINS AND A-75787 TO OLIVER A. JENKINS HAVING BEEN CAREFULLY CONSIDERED, ARE HEREBY DENIED FOR THE REASON THAT SAID PETITIONS RAISE NO SUBSTANTIAL ISSUE AS TO THE VALIDITY OF SAID SUBPOENAS. UPON AGREEMENT OF THE EMPLOYERS AND OF THE WITNESSES NAMED IN SAID SUBPOENAS TO COMPLY THEREWITH AND UPON THE EMPLOYER'S REQUEST TO THE HEARING OFFICER AT THE CROTON HOTEL, 7326 COLLINS AVE. IN MIAMI BEACH, FLORIDA, BE-

FORE 5:00 P.M., ON JANUARY 27, 1956, THE HEARING NOW SCHEDULED FOR FEBRUARY 2, 1956, IN MIAMI, FLORIDA, WILL BE RESCHEDULED FOR FEBRUARY 2, 1956, IN JACKSONVILLE, FLORIDA, FOR THE PURPOSE OF TAKING TESTIMONY AND OTHER EVIDENCE AS TO THE JURISDICTION OF THE NATIONAL LABOR RELATIONS BOARD IN THIS CASE, AND ON SUCH OTHER ISSUES AS THE HEARING OFFICER OR THE PARTIES MAY DESIRE, AT WHICH TIME AND PLACE ALL OF SAID SUBPOENAS MAY BE COMPLIED WITH, SUBJECT TO FURTHER ADJOURNMENT OF THE HEARING TO MIAMI, FLORIDA, AT SUCH LATER DATE AS THE HEARING OFFICER MAY DIRECT. IN THE EVENT OF A CHANGE OF THE PLACE OF HEARING TO JACKSONVILLE, FLORIDA, THE HEARING OFFICER WILL NOTIFY THE PARTIES PROMPTLY BY TELEPHONE OR TELEGRAPH AS TO THE PLACE AND HOUR WHERE IT WILL BE CONDUCTED IN SAID CITY.

Allen Sinsheimer, Jr.
Hearing Officer

ORDER TO SHOW CAUSE

On February 21, 1956 ORDER TO SHOW CAUSE was filed in the words and figures as follows:

(CAPTION OMITTED)

Petitioner having filed its petition here[illegible] for an order

requiring Duval Jewelry Company of Miami, Inc., the Respondent, to obey a certain subpoena duces tecum, and the Court having duly considered the same, it is hereby,

ORDERED, that the Respondent appear in this Court at Miami, Florida on the 2nd day of March, 1956, at 10:30 o'clock in the forenoon, or as soon thereafter as counsel may be heard, and show cause, if any there be, why the prayer of said petition should not be granted, and it is hereby further,

ORDERED, that this order and the petition on which it is based be served on the Respondent, on or before February 25th, 1956, and that the Respondent shall file and serve its answer to the petition not later than March 1st, 1956. Service of this order, of the petition herein, and of the Respondent's answer, in any manner provided by the Rules of Civil Procedure for the District Courts of the United States, or by registered or certified mail, shall constitute good and sufficient service.

Issued at Miami, Florida, this 21 day of February, 1956.

EMETT C. CHOATE
Judge of the District Court of the
United States for the Southern
District of Florida

ANSWER OF RESPONDENT

On March 2, 1956 ANSWER OF RESPONDENT was filed in the words and figures as follows:

(CAPTION OMITTED)

Comes now DUVAL JEWELRY COMPANY OF MIAMI, INC., a corporation (hereinafter called the Respondent) by its undersigned counsel, and files this Answer to the Petition to Enforce Subpoena heretofore filed herein and answering, says:

I.

The Respondent admits the material allegations contained in Paragraphs numbered 1, 2, 3, 4, 5, 6, 7 and 8 of said Petition.

II.

The Respondent, answering Paragraph 9 of said Petition, asserts and alleges that Respondent is without knowledge of the allegations contained in said Paragraph 9 except that Respondent admits service of said subpoena or subpoenas upon Respondent as alleged.

III.

The Respondent admits the material allegations of Paragraphs 10 and 11 of said Petition.

IV.

The Respondent denies the allegations of Paragraph 12 of said Petition and further answering said Paragraph 12 Respondent asserts and alleges that the matter of the revocation of said subpoena or subpoenas was not properly before the Petitioner's Hearing Officer but had been presented to Petitioner.

V.

The Respondent, answering Paragraph 13 of said Petition, asserts and alleges that the said Hearing Officer attempted to rule upon Respondent's petition to revoke but that said Hearing Officer did not have the power, jurisdiction or authority to rule upon said petition to revoke nor to issue an order or decision denying said petition to revoke, as will more particularly hereinafter appear.

VI.

The Respondent admits the material allegations of Paragraph 14 of said Petition.

The Respondent, answering Paragraph 15 of said Petition, denies that the information sought by said subpoena or said subpoenas is necessary or relevant to the said representation proceeding as alleged in said Paragraph 15.

VIII.

The Respondent denies the material allegations of Paragraph 16 of said Petition.

IX.

The Respondent, further answering said Petition, and each and every material allegation thereof, asserts and alleges:

1. The said subpoena or subpoenas were not issued by the National Labor Relations Board, or any member thereof, upon application of any party to the said representation proceeding as required by Section 11 of the Labor Management Relations Act, 1947. The said subpoena or subpoenas show upon their face that the request for issuance was made by a person not a party to the said proceeding.

2. The Respondent duly filed a petition to revoke the said subpoena or subpoenas with the National Labor Relations Board the Petitioner herein, as required by said Section 11 of said Act, and the said National Labor Relations Board has failed and refused to rule upon said petition to revoke.

3. The said Hearing Officer in said representation proceeding has no power, jurisdiction nor authority to rule upon petitions to revoke subpoenas, this power, jurisdiction and authority being reserved solely and exclusively to the National Labor Relations Board under Section 11 of said Act and is not delegable to any agent or agency of said Board.

4. Said subpoena or subpoenas were not issued according to law, in that there is no authority in the Labor Management Relations Act, 1947, or in any other law applicable to National Labor Relations Board representation hearings, or in any of the Federal Rules of Civil Procedure author-

izing the issuance of subpoenas in National Labor Relations Board representation proceeding or enforcement by this Court of subpoenas framed in the alternative, calling for the preparation and production of an unsworn statement by an unidentified person which written statement would not be legal and proper evidence and would not be admissible.

5. On January 3, 1956, service was made of subpoenas duces tecum on Duval Jewelry Company, Duval Jewelry Company of Miami, Inc., Jenkins Jewelry Company and Jenkins and Sons, Inc., and on January 6, 1956, service was made of subpoenas upon Oliver A. Jenkins personally and as President of Duval Jewelry Company, all of said subpoenas requiring the production, at the same time, at a hearing on January 10, 1956, in a city 350 miles away from the principal offices of each of said corporations, of all records or statements showing all purchases made by and all sales made to or on behalf of some eighteen corporations operating sixteen retail jewelry stores throughout the State of Florida in the cities of Coral Gables, Miami, Jacksonville, Tallahassee, DeLand, Ocala, Fort Lauderdale, Daytona Beach, Gainesville, West Palm Beach, Orlando, Tampa and St. Petersburg. To comply with said subpoenas would require the production of all operating books of these several corporations, amounting to scores of ledgers and other books and records, and thousands of individual cards, which would be in the hands of the National Labor Relations Board for an indefinite period of time and to compile statements showing data to be produced would require approximately eight weeks time, since sales and purchases of the said several corporations involve thousands of transactions over a year's time. The Respondent asserts and alleges that there is only one retail store involved in the National Labor

Relations Board proceeding; that said retail store is operated in the City of Miami, Florida, by Duval Jewelry Company of Miami, Inc., a Florida corporation and that there are no employees of any other corporation involved in the said National Labor Relations Board proceeding; that the National Labor Relations Board is attempting a mere "fishing expedition" into the records of all eighteen corporations, wherever located, for the purpose of trying to find some basis of asserting jurisdiction. The Respondent asserts, and the Petitioner well knows, that the Petitioner has no jurisdiction over the single retail store in the City of Miami, involved in the hearing.

6. The said subpoena requires the production of date not material or relevant to any issue in said representation hearing and seeks evidence which does not relate to any matter under investigation or in question in said hearing, to-wit: The identity of suppliers of all purchases made by Respondent, and the amount of each purchase.

7. The said subpoena is oppressive and unreasonable within meaning of Rule 45 b of the Federal Rules of Civil Procedure, in that it required the production of all records showing, or statements showing, the names of all current shareholders and number of shares held by each shareholder and showing each and every purchase made by Respondent company for an entire year, the names of each and every person from whom purchases were made and the total dollar amount of purchases from each person, at a hearing in a city 350 miles away from the principal office of said Respondent company within a period of less than six working days from time of service of said subpoena.

Wherefore, having fully answered said Petition, Respondent respectfully prays that the Court will

(1) Deny the prayers of said Petition;

(2) Enter an order quashing said subpoena or subpoenas.

Respectfully submitted this 1st day of March, 1956.

HAMILTON & BOWDEN
By /s/ Theo Hamilton
(Theo Hamilton)
Counsel for Respondent

Address of Counsel for Respondents:

Hamilton & Bowden
401 Smith Building
Jacksonville 2, Florida

CERTIFICATE OF SERVICE

I hereby certify that I have this 1st day of March, 1956, filed the foregoing Answer in this Court and served a copy thereof by registered United States Mail upon the following:

National Labor Relations Board
Washington, D. C.

Lloyd R. Fraker, Esq.
Chief Law Officer
Tenth Region
National Labor Relations Board
528 Peachtree-Seventh Building
Atlanta, Georgia

Allen Sinsheimer Jr., Esq.
Attorney
Tenth Region
National Labor Relations Board
Croton Hotel
7326 Collins Avenue
Miami Beach, Florida

/s/ Theo Hamilton
(Theo Hamilton)
of Counsel for Respondent

PETITION TO ENFORCE SUBPOENA

On February 21, 1956 PETITION TO ENFORCE SUBPOENA was filed in the words and figures as follows:

In The District Court of the United States
For The Southern District of Florida
Miami Division

National Labor Relations Board,
An Administrative Agency of the
Federal Government
(Petitioner)

vs: Civil No. 6760-M

Duval Jewelry Company, a Corporation
(Respondent)

Now comes the National Labor Relations Board, the Petitioner herein, and for this its petition to enforce a subpoena, states that:

1. Petitioner is an administrative agency of the United States Government created pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. V. Sec. 151, et. seq.), hereinafter referred to as the Act.

2. Duval Jewelry Company, the Respondent herein is a corporation duly organized and existing under the laws of the State of Florida, having its principal office at Jacksonville in said state.

3. The Court has jurisdiction of the subject matter of this proceeding under Section 11(2) of the Act [29 USCA 161 (2)] in that the inquiry in aid of which the subpoena hereby sought to be enforced was issued to the Respondent, is and was being carried on within this judicial district.

4. Pursuant to Section 6 of the Act Petitioner has adopted Rules and Regulations (Series 6, effective June 3, 1952), covering the conduct of its operations, which have been duly published in the Federal Register (17 F.R. 4982) as provided for in the Administrative Procedure Act (5 U.S.C. 1002), which Rules and Regulations will be hereinafter referred to as the Rules. Under Section 44 U.S.C. 307 Judicial notice may be taken of the Rules.

5. Now and at all times material to the issues herein there is, and was pending before the Petitioner, under Section 9(c) of the Act, a representation proceeding formerly entitled

"In the matter of

Duval Jewelry Company of Miami, Inc.
(Employer)
and Case No. 10*RC-3333

Local 1625, Retail Clerks International
Association, AFL
(Petitioner)"

which was instituted on November 22, 1955, on which date Local 1625, Retail Clerks International Association, AFL, hereinafter referred to as the Union, filed a representation

petition in the Petitioner's Tenth Regional Office, and the title to which said proceeding was thereafter changed to

"In the matter of

Duval Jewelry Company, and/or Duval Jewelry Company of Miami, Inc.; and/or Jenkins & Sons, Inc.; and/or Jenkins Jewelry Company[1]

(Employers)

and Case No. 10-RC-3333

Retail Clerks International Association, Local No. 1625, AFL-CIO

(Petitioner)

[1]An amended petition was filed herein on 1-4-56 to add as an employer Jenkins & Sons, Inc., Jenkins Jewelry Company and Duval Jewelry Company of Miami, Inc."

when the union filed a first amended representation petition therein on January 4, 1956. A copy of each of said representation petitions marked Exhibits "1" and "2" respectively are hereto attached and hereby made a part hereof.

6. On November 28, 1955, Petitioner issued and served on the parties, its Notice of Representation Hearing in said proceeding in order to investigate the question as to the representation of employees which was raised by the original representation petition above-described, notifying the parties to said proceeding that a hearing would be held therein on December 5, 1955, a copy of which said Notice of

Representation Hearing, marked Exhibit "3", is likewise hereto attached and hereby made a part hereof.

7. On December 2, 1955, Petitioner, rescheduled the hearing in said proceeding to December 20, 1955, by its Order Rescheduling Hearing, which was duly served on said parties and a copy of which, marked Exhibit "4", is likewise hereto attached, and hereby made a part hereof.

8. On January 4, 1956, the Petitioner issued and served on the parties its Amended Notice of Representation Hearing in said proceeding and also served on each of said parties a copy of the first amended representation petition theretofore filed by the union, whereby the parties were notified of the amendments to said original representation petition, and that the hearing would be held on January 10, 1956, a copy of said Amended Notice of Representation Hearing, marked Exhibit "5" is likewise hereto attached and hereby made a part hereof.

9. On December 30, 1955, as provided for in Section 11(1) of the Act and by Section 102.31 (a) of the Rules, and at the written request of counsel for the Petitioner's Regional Director for said Region, the Petitioner issued its subpoena duces tecum No. 25986 directed to the Respondent herein, requiring its attendance and the production of certain of its records at the hearing in said proceeding which was then scheduled for January 10, 1956, or in lieu of appearing and producing said records at the hearing to submit a written statement giving the information sought to be subpoenaed. Said subpoena was duly served upon the Respondent on January 3, 1956. A true copy of said written request and of the document designating counsel for said

Regional Director, marked Exhibits "6" and "7" respectively, are likewise hereto attached and hereby made a part hereof. A true copy of the subpoena duces tecum, together with the United States Marshal's return of service thereof, marked Exhibit "8" is likewise hereto attached and hereby made a part hereof.

10. On January 9, 1956, the Respondent filed its timely petition to revoke the subpoena above-described, and for permission to argue orally and to submit briefs in support of said petition to revoke. A true copy of said petition to revoke, marked Exhibit "9" is likewise hereto attached and hereby made a part hereof.

11. On January 9, 1956 the representation hearing in said proceeding was postponed to February 2, 1956, by a written order duly served on the parties, a true copy of which, marked Exhibit "10", is likewise hereto attached and hereby made a part hereof.

12. On January 9, 1956, the Petitioner's Hearing Officer, before whom said proceeding was then pending, granted, by telegram, respondent's request for oral argument and for permission to file briefs in support of its said petition to revoke. A true copy of said telegram, marked Exhibit "11", is likewise hereto attached and hereby made a part hereof.

13. On January 26, 1956, the Hearing Officer denied the Respondent's said petition to revoke by a telegraphic order, a true copy of which, marked Exhibit "12" is likewise hereto attached and hereby made a part hereof.

14. On February 2, 1956, the Respondent appeared at said hearing, by its counsel, and refused to respond to said subpoena or to submit the written statement giving the information sought to be subpoenaed.

15. The information sought to be obtained by said subpoena was necessary and relevant to the said representation proceeding in order to determine the extent to which the Respondent's business operations were, either carried on in interstate commerce, or affected such commerce, and to determine its relationship to the other Employers named in said first amended representation petition, so that Petitioner could determine if it will assert its jurisdiction over the Respondent in said representation proceeding.

16. The refusal of the Respondent to produce the records described in said subpoena, or to submit a written statement in lieu of producing the same, constitutes contumacious conduct with the purview of Section 11(2) of the Act, and by thus impeding the Petitioner in the investigation of said representation proceeding now pending before it, the Respondent has prevented and is preventing the Petitioner from carrying on its duties and functions under the Act.

WHEREFORE, Petitioner, the National Labor Relations Board, respectfully prays:

(a) That an order to show cause issue forthwith directing the Respondent to appear before this Court on a day certain to be fixed in said order, and to show cause, if any there be, why an order should not issue directing it to appear before Petitioner's

Hearing Officer, at such time and place as he may designate, and there produce the records described in said subpoena, and give testimony and answer any and all questions relevant and material to the matter under investigation and in question in said representation proceeding;

(b) That upon the return of said order to show cause, and order issue requiring the Respondent to appear before said Hearing Officer, at a time and place to be fixed by *by* him, and there produce the records described in said subpoena, and give testimony and answer any and all questions relevant and material to the matter under investigation and in question in said representation proceeding; and

(c) that Petitioner have such other and further relief as may be necessary and proper.

NATIONAL LABOR
RELATIONS BOARD, Petitioner
By Theophil C. Kammholz
General Counsel

/s/ Lloyd R. Fraker
Lloyd R. Fraker,
Chief Law Officer
Tenth Region
National Labor Relations Board
528 Peachtree-Seventh Building
Atlanta 23, Georgia

/s/ Allen Sinsheimer, Jr.
Allen Sinsheimer, Jr., Attorney
Tenth Region
National Labor Relations Board
Croton Hotel
7326 Collins Avenue
Miami Beach, Florida

EXHIBIT "8"

NLRB-31
(8-50)

SUBPENA DUCES TECUM

United States of America
National Labor Relations Board

To Duval Jewelry Company
34 W. Forsyth Street, Jacksonville, Florida

Request therefor having been duly made by Frank E. Hamilton, Jr., Attorney whose address is 50 Seventh St
(Street)
N. E. Atlanta 23, Georgia
(City) (State)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE a hearing officer of the National Labor Relations Board, at Plumbing Industry Program Building, 2526 W. Flagler Street in the City of Miami, Florida on the 10th day of January, 1956 at 10:00 o'clock a.m. of that day, to testify in the Matter of Duval Jewelry Company of Mi-

ami, Inc. and Local 1625, Retail Clerks International Association, AFL, Case No. 10-RC-3333

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

1. The books, records and other documents showing all purchases made by said Duval Jewelry Company during the calendar year from January 1, 1955 through December 31, 1955, or during the last fiscal year of said corporation,

2. The books, records and other documents showing all purchases made by said Duval Jewelry Company during the calendar year from January 1, 1955 through December 31, 1955 or during the last fiscal year of said corporation, for or on behalf of each of the following named corporations:

Duval Jewelry Company of Coral Gables, Inc.
Duval Jewelry Company at Eighth and Main
Duval Jewelry Company of Tallahassee
Duval Jewelry Company of Deland
Duval Jewelry Company of Ocala
Duval Jewelry Company of Fort Lauderdale
Duval Jewelry Company of Daytona Beach
Duval Jewelry Company of Gainesville
Duval Jewelry Company of West Palm Beach, Inc.
Duval Jewelry Company of Miami, Inc.
Duval Jewelry Company of Orlando, Inc.

Duval Jewelry Company of Tampa, Inc.
Duval Jewelry Company of St. Petersburg, Inc.
Duval Jewelry Company at Five Points
Duval Jewelry Company at Colonial Plaza

3. The books, records and other documents showing all sales made by said Duval Jewelry Company during the calendar year from January 1, 1955 through December 31, 1955, or during the last fiscal year of said corporation to the following named corporations:

Duval Jewelry Company of Coral Gables, etc.
as listed in paragraph 2 above.

4. The books, records, and other documents showing amount and extent of shares owned by said Duval Jewelry Company of each of the following-named corporations:

Jenkins and Sons, Inc.
Jenkins Jewelry Company
Duval Jewelry Company of Coral Gables, Inc.
etc. as listed in paragraph 2 above.

or in lieu of the foregoing a statement signed and certified to by a responsible official of said corporation setting forth:

1. The total dollar value of purchases made by said Duval Jewelry Company during the calendar year January 1, 1955 through December 31, 1955, or during its last fiscal year, the names of all persons from whom purchases were made during said period and

the total dollar amount of purchases from each of said persons.

2. The total dollar value of purchases made by said Duval Jewelry Company during the calendar year January 1, 1955 through December 31, 1955, or during its last fiscal year for or on behalf of each of the following named corporations:

Jenkins and Sons, Inc.
Jenkins Jewelry Company
Duval Jewelry Company of Coral Gables, Inc.,
etc. as listed in paragraph 2 above.

The names of all persons from whom such purchases were made during said period and the total dollar amount of such purchases from each of said persons:

3. The total dollar value of all sales made by said Duval Jewelry Company during the calendar year from January 1, 1955, through December 31, 1955, or during the last fiscal year of said corporation to each of the following-named corporations:

Jenkins and Sons, Inc.
Jenkins Jewelry Company
Duval Jewelry Company of Coral Gables, Inc.,
etc. as listed in paragraph 2

4. The number of shares owned by said Duval Jewelry Company of each of the following-named corporations, and the total number of shares issued by each of these corporations:

Jenkins and Sons, Inc.
Jenkins Jewelry Company
Duval Jewelry Company of Coral Gables, Inc.,
etc. as listed in paragraph 2 above.

B-25986

In testimony whereof, the seal of the National Labor Relations Board is affixed hereto, and the undersigned, a member of said National Labor Relations Board, has hereunto set his hand at Atlanta, Georgia this 30th day of December, 1955.

/s/ Abe Murdock

NOTICE TO WITNESS — Witness fees for attendance, subsistence, and mileage, under this subpena are payable by the party at whose request the witness is subpenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpena with the voucher when claiming reimbursement.

RETURN OF UNITED STATES MARSHAL SOUTHERN DISTRICT FLORIDA EXECUTED THIS WRIT AT JACKSONVILLE, FLORIDA, ON JAN. 3, 1956, BY SERVING THE WITHIN-NAMED DUVAL JEWELRY CO., A CORPORATION, BY DELIVERING A COPY OF THIS SUMMONS TOGETHER WITH COPY OF COMPLAINT TO L. K. MAXWELL, AN OFFICER OF THE SAID _____, A CORPORATION.

THOMAS H. TRENT,
UNITED STATES MARSHAL
BY: /s/ Jerry D. Dragones
Deputy

FEE	$ .50
MILEAGE	.10
TOTAL	.60

EXHIBIT "9"

PETITION TO REVOKE SUBPENA

United States of America
Before The National Labor Relations Board

In the Matter of:

Duval Jewelry Company, and/or Duval Jewelry Company of Miami, Inc.; and/or Jenkins & Sons, Inc. and/or Jenkins Jewelry Company

(Employers)

and Case No. 10-RC-3333

Retail Clerks International Association, Local No. 1625, AFL-CIO

(Petitioner)

COMES NOW, Duval Jewelry Company, a corporation, by its undersigned counsel, and petitions the National Labor Relations Board to revoke Subpena No. B-25986, addressed to said corporation, upon the following grounds, to-wit:

1. Said subpena is oppressive and unreasonable in that it requires on January 10, 1956, in a city 350 miles away from the offices of said company, the production of records or statements of all purchases made by and sales made to or on behalf of some 15 corporations scattered throughout the State of Florida which operate sixteen retail jewelry stores throughout the State of Florida.

2. Said subpena seeks evidence which is immaterial and irrelevant to any proper issue in the above styled cause.

3. Duval Jewelry Company is not subject to the jurisdiction of the National Labor Relations Board.

4. It does not appear that the said subpena was duly and properly issued according to law.

5. It does not appear that the said subpena was duly and properly issued according to the Rules and Regulations of the National Labor Relations Board.

6. Duval Jewelry Company has no interest in these proceedings.

7. Said subpena seeks evidence which does not relate to any matter under investigation or in question in the above styled cause.

8. The National Labor Relations Board has no jurisdiction in this cause.

9. Duval Jewelry Company is not the employer of any employees involved in this cause.

10. There is no cause pending before the National Labor Relations Board entitled "in the matter of Duval Jewelry Company of Miami, Inc. and Local 1625, Retail Clerks International Association, AFL, Case No. 10-RC-3333", as stated in said subpena.

Petitioner hereby requests opportunity, upon reasonable notice, to orally argue this petition and any answer thereto and any issues involved herein, and thereafter the opportunity to file a written brief upon said issues.

RESPECTFULLY SUBMITTED this 7th day of January, 1956.

HAMILTON & BOWDEN
By /s/ Theo Hamilton
(Theo Hamilton)
Attorneys for said Petitioner

Address of Counsel:

Hamilton & Bowden
Suite 401, Smith Building
Jacksonville 2, Florida

CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of January, 1956, mailed the foregoing Petition to Revoke Subpena to.

National Labor Relations Board
Washington, D. C.

Allen Sinsheimer, Jr., Esq.
Hearing Officer
National Labor Relations Board, Tenth Region
50 Seventh Street, N. E.
Atlanta 23, Georgia

/s/ Theo Hamilton
(Theo Hamilton)

RECITATION — Civil 6760-M:

The Exhibits being numbered from 1 to 7 inclusive, and 10 to 12 inclusive, which are attached to the petition to enforce subpoena in Civil 6760-M are one and the same as attached to the petition in 6759-M-Civil and found on page 13 of this record.

ORDER TO SHOW CAUSE

On February 21, 1956 ORDER TO SHOW CAUSE was filed in the words and figures as follows:

(CAPTION OMITTED)

Petitioner having filed its petition herein for an order requiring Duval Jewelry Company, the Respondent, to obey a certain subpoena duces tecum, and the Court having duly considered the same, it is hereby,

ORDERED, that the Respondent appear in this Court at Miami, Florida, on the 2nd day of March, 1956, at 10:30 o'clock in the forenoon, or as soon thereafter as counsel may be heard, and show cause, if any there be, why the prayer of said petition should not be granted; and it is hereby further,

ORDERED, that this order and the petition on which it is based be served on the Respondent, on or before February 25th, 1956 and that the Respondent shall file and serve its answer to the petition not later than March 1st, 1956.

Service of this order, of the petition herein, and of the Respondent's answer, in any manner provided by the Rules of Civil Procedure for the District Courts of the United States, or by registered or certified mail, shall constitute good and sufficient service.

Issued at Miami, Florida, this 21 day of February, 1956.

EMETT C. CHOATE
Judge of the District Court of the United States for the Southern District of Florida

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ANSWER OF RESPONDENT

On March 2, 1956 ANSWER OF RESPONDENT was filed in the words and figures as follows:

(CAPTION OMITTED)

Comes now DUVAL JEWELRY COMPANY, a corporation (hereinafter called the Respondent), by its undersigned counsel, and files this Answer to the Petition to Enforce Subpoena heretofore filed herein and answering, says:

I.

The Respondent admits the material allegations contained in Paragraphs numbered 1, 2, 3, 4, 5, 6, 7 and 8 of said Petition.

II.

The Respondent, answering Paragraph 9 of said Petition, asserts and alleges that Respondent is without knowledge of the allegations contained in said Paragraph 9 except that Respondent admits service of said subpoena or subpoenas upon Respondent as alleged.

III.

The Respondent admits the material allegations of Paragraphs 10 and 11 of said Petition.

IV.

The Respondent denies the allegations of Paragraph 12 of said Petition and further answering said Paragraph 12 Respondent asserts and alleges that the matter of the recocation of said subpoena or subpoenas was not properly before the Petitioner's Hearing Officer but had been presented to Petitioner.

V.

The Respondent, answering Paragraph 13 of said Petition, asserts and alleges that the said Hearing Officer attempted to rule upon Respondent's petition to revoke but that said Hearing Officer did not have the power, jurisdiction or authority to rule upon said petition to revoke nor to issue an order or decision denying said petition to revoke, as will more particularly hereinafter appear.

VI.

The Respondent admits the material allegations of Paragraph 14 of said petition.

VII.

The Respondent, answering Paragraph 15 of said Petition, denies that the information sought by said subpoena or said subpoenas is necessary or relevant to the said representation proceeding as alleged in said Paragraph 15.

VIII.

The Respondent denies the material allegations of Paragraph 16 of said Petition.

IX.

The Respondent, further answering said Petition, and each and every material allegation thereof, asserts and alleges:

1. The said subpoena or subpoenas were not issued by the National Labor Relations Board, or any member thereof, upon application of any party to the said representation proceeding as required by Section 11 of the Labor Management Relations Act, 1947. The said subpoena or subpoenas show upon their face that the request for issuance was made by a person not a party to the said proceeding.

2. The Respondent duly filed a petition to revoke the said subpoena or subpoenas with the National Labor Rela-

tions Board, the Petitioner herein, as required by said Section 11 of said Act, and the said National Labor Relations Board has failed and refused to rule upon said petition to revoke.

3. The said Hearing Officer in said representation proceeding has no power, jurisdiction nor authority to rule upon petitions to revoke subpoenas, this power, jurisdiction and authority being reserved solely and exclusively to the National Labor Relations Board under Section 11 of said Act and is not delegable to any agent or agency of said Board.

4. Said subpoena or subpoenas were not issued according to law, in that there is no authority in the Labor Management Relations Act, 1947, or in any other law applicable to National Labor Relations Board representation hearings, or in any of the Federal Rules of Civil Procedure authorizing the issuance of subpoenas in National Labor Relations Board representation proceeding or enforcement by this Court of subpoenas framed in the alternative, calling for the preparation and production of an unsworn statement by an unidentified person which written statement would not be legal and proper evidence and would not be admissible.

5. On January 3, 1956, service was made of subpoenas duces tecum on Duval Jewelry Company, Duval Jewelry Company of Miami, Inc., Jenkins Jewelry Company and Jenkins and Sons, Inc., and on January 6, 1956, service was made of subpoenas upon Oliver A. Jenkins personally and as President of Duval Jewelry Company, all of said subpoenas requiring the production at the same time, at a

hearing on January 10, 1956, in a city 350 miles away from the principal offices of each of said corporations, of all records or statements showing all purchases made by and all sales made to or throughout the State of Florida in the cities of Coral Gables, Miami, Jacksonville, Tallahassee, DeLand, Ocala, Fort Lauderdale, Daytona Beach, Gainesville, West Palm Beach, Orlando, Tampa and St. Petersburg. To comply with said subpoenas would require the production of all operating books of these several corporations, amounting to scores of ledgers and other books and records, and thousands of individual cards, which would be in the hands of the National Labor Relations Board for an indefinite period of time and to compile statements showing date to be produced would require approximately eight weeks' time, since sales and purchases of the said several corporations involve thousands of transactions over a year's time. The Respondent asserts and alleges that there is only one retail store involved in the National Labor Relations Board proceeding; that said retail store is operated in the City of Miami, Florida, by Duval Jewelry Company of Miami, Inc., a Florida corporation and that there are no employees of any other corporation involved in the said National Labor Relations Board proceeding; that the National Labor Relations Board is attempting a mere "fishing expedition" into the records of all eighteen corporations, wherever located, for the purpose of trying to find some basis of asserting jurisdiction. The Respondent asserts, and the Petitioner well knows, that the Petitioner has no jurisdiction over the single retail store in the City of Miami, involved in the hearing.

6. The said subpoena requires the production of data not material or relevant to any issue in said representation hearing and seeks evidence which does not relate to any

matter under investigation or in question in said hearing, to-wit: The identity of suppliers of all purchases made by Respondent, and the amount of each purchase.

7. The said subpoena is oppressive and unreasonable within the meaning of Rule 45 b of the Federal Rules of Civil Procedure, in that it required the production of all records showing, or statement showing, each and every purchase made by Respondent corporation for an entire year, and the name of each person from whom each purchase was made and the dollar value of each and every purchase, each and every purchase made by Respondent for an entire year for or on behalf of fifteen other corporations operating retail jewelry stores throughout the State of Florida, and the identity of each person from whom such purchases were made and the dollar amount of each sale; each and every sale made by Respondent for an entire year to fifteen other corporations operating retail jewelry stores throughout the State of Florida, and the amount of each sale to each corporation; and the amount and extent of shares owned by Respondent in seventeen other corporations; all of said data required to be produced in a city 350 miles away from the principal office of Respondent, within less than six working days of the time of service of the subpoena.

Wherefore, having fully answered said Petition, Respondent respectfully prays that the Court will

(1) Deny the prayers of said Petition;

(2) Enter an order quashing said subpoena or subpoenas.

Respectfully submitted this 1st day of March, 1956.

HAMILTON & BOWDEN
By /s/ Theo Hamilton
(Theo Hamilton).
Counsel for Respondent

Address of Counsel for Respondents:

Hamilton & Bowden
401 Smith Building
Jacksonville 2, Florida

CERTIFICATE OF SERVICE

I hereby certify that I have this 1st day of March, 1956 filed the foregoing Answer in this Court and served a copy thereof by registered United States Mail upon the following:

PETITION TO ENFORCE SUBPOENA

On February 21, 1956 PETITION TO ENFORCE SUBPOENA was filed in the words and figures as follows:

In The District Court of The United States
For The Southern District of Florida
Miami Division

National Labor Relations Board
An Administrative Agency of the
Federal Government
(Petitioner)
vs. Civil No. 6761-M

Jenkins and Sons, Inc.
A Corporation
(Respondent)

Now comes the National Labor Relations Board, the Petitioner herein, and for this its petition to enforce a subpoena, states that:

1. Petitioner is an administrative agency of the United States Government created pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. V, Sec. 151 et seq) hereinafter referred to as the Act.

2. Jenkins and Sons, Inc., the Respondent herein, is a corporation duly organized and existing under the laws of the State of Florida, having its principal office at Jacksonville in said state.

3. The Court has jurisdiction of the subject matter of this proceeding under Section 11(2) of the Act [29 USCA 161(2)] in that the inquiry in aid of which the subpoena hereby sought to be enforced was issued to the Respondent, is and was being carried on within this judicial district.

4. Pursuant to Section 6 of the Act Petitioner has adopted Rules and Regulations (Series 6, effective June 3, 1952), covering the conduct of its operations, which have been duly published in the Federal Register (17 F.R. 4982) as provided for in the Administrative Procedure Act (5 U.S.C. 1002) which Rules and Regulations will be hereinafter referred to as the Rules. Under Section 44 U.S.C. 307 judicial notice may be taken of the Rules.

5. Now and at all times material to the issues herein there is, and was pending before the Petitioner, under Section 9(c) of the Act, a representation proceeding formerly entitled

"In the Matter of

Duval Jewelry Company of Miami, Inc.
(Employer)
and Case No. 10-RC-3333

Local 1625, Retail Clerks International
Association, AFL
(Petitioner)"

which was instituted on November 22, 1955, on which date local 1625, Retail Clerks International Association, AFL,

hereinafter referred to as the Union, filed a representation petition in the Petitioner's Tenth Regional Office, and the title to which said proceeding was thereafter changed to

"In the Matter of

Duval Jewelry Company, and/or Duval Jewelry Company of Miami, Inc.; and/or Jenkins & Sons, Inc.; and/or Jenkins Jewelry Company[1]
(Employers)
and Case No. 10-RC-3333

Retail Clerks International Association, Local No. 1625, AFL-CIO
(Petitioner)"

[1]An Amended petition was filed herein on 1-4-56 to add as an employer Jenkins & Sons, Inc., Jenkins Jewelry Company and Duval Jewelry Company of Miami, Inc."

when the Union filed a first amended representation petition therein on January 4, 1956. A copy of each of said representation petitions marked Exhibits "1" and "2" respectively are hereto attached and hereby made a part hereof.

6. On November 28, 1955, Petitioner issued and served on the parties, its Notice of Representation Hearing in said proceeding in order to investigate the question as to the representation of employees which was raised by the original representation petition above-described, notifying the parties to said proceeding that a hearing would be held therein on December 5, 1955, a copy of which said Notice

of Representation Hearing, marked Exhibit "3" is likewise hereto attached and hereby made a part hereof.

7. On December 2, 1955, Petitioner rescheduled the hearing in said proceeding to December 20, 1955, by its Order Rescheduling Hearing, which was duly served on said parties and a copy of which, marked Exhibit "4" is likewise hereto attached, and hereby made a part hereof.

8. On January 4, 1956, the Petitioner issued and served on the parties its Amended Notice of Representation Hearing in said proceeding and also served on each of said parties a copy of the first amended representation petition theretofore filed by the union, whereby the parties were notified of the amendments to said original representation petition, and that the hearing would be held on January 10, 1956 a copy of said Amended Notice of Representation Hearing, marked Exhibit "5" is likewise hereto attached and hereby made a part hereof.

9. On December 30, 1955, as provided for in Section 11(1) of the Act and by Section 102.31 (a) of the Rules, and at the written request of counsel for the Petitioner's Regional Director for said Region, the Petitioner issued its subpoena duces tecum No. B-25987 directed to the Respondent herein, requiring its attendance and the production of certain of its records at the hearing in said proceeding which was then scheduled for January 10, 1956, or in lieu of appearing and producing said records at the hearing to submit a written statement giving the information sought to be subpoenaed. Said supoena was duly served upon the Respondent on January 3, 1956. A true copy of said written request and of the document designating counsel for said

Regional Director, marked Exhibits "6" and "7" respectively, are likewise hereto attached and hereby made a part hereof. A true copy of the subpoena duces tecum, together with the United States Marshal's return of service thereof, marked Exhibit "8" is likewise hereto attached and hereby made a part hereof.

10. On January 9, 1956, the Respondent filed its timely petition to revoke the subpoena above-described, and for permission to argue orally and to submit briefs in support of said petition to revoke. A true copy of said petition to revoke, marked Exhibit "9" is likewise hereto attached and hereby made a part hereof.

11. On January 9, 1956, the representation hearing in said proceeding was postponed to February 2, 1956, by a written order duly served on the parties, a true copy of which, marked Exhibit "10" is likewise hereto attached and hereby made a part hereof.

12. On January 9, 1956, the Petitioner's Hearing Officer, before whom said proceeding was then pending, granted, by telegram, respondent's request for oral argument and for permission to file briefs in support of its said petition to revoke. A true copy of said telegram marked Exhibit "11" is likewise hereto attached and hereby made a part hereof.

13. On January 26, 1956 the Hearing Officer denied the Respondent's said petition to revoke by a telegraphic order, a true copy of which, marked Exhibit "12" is likewise hereto attached and hereby made a part hereof.

14. On February 2, 1956, the Respondent appeared at said hearing, by its counsel, and refused to respond to said subpoena or to submit the written statement giving the information sought to be subpoenaed.

15. The information sought to be obtained by said subpoena was necessary and relevant to the said representation proceeding in order to determine the extent to which the Respondent's business operations were, either carried on in interstate commerce, or affected such commerce, and to determine its relationship to the other Employers named in said first amended representation petition, so that Petitioner could determine if it will assert its jurisdiction over the Respondent in said representation proceeding.

16. The refusal of the Respondent to produce the records described in said subpoena, or to submit a written statement in lieu of producing the same, constitutes contumacious conduct within the purview of Section 11(2) of the Act, and by thus impeding the Petitioner in the investigation of said representation proceeding now pending before it, the Respondent has prevented and is preventing the Petitioner from carrying on its duties and functions under the Act.

WHEREFORE, Petitioner, the National Labor Relations Board, respectfully prays:

(a) That an order to show cause issue forthwith directing the Respondent to appear before this Court on a day certain to be fixed in said order, and to show cause, if any there be, why an order should not issue directing it to appear before Petitioner's

Hearing Officer, at such time and place as he may designate, and there produce the records described in said subpoena, and give testimony and answer any and all questions relevant and material to the matter under investigation and in question in said representation proceeding;

(b) that upon the return of said order to show cause, an order issue requiring the Respondent to appear before said Hearing Officer, at a time and place to be fixed by him, and there produce the records described in said subpoena, and give testimony and answer any and all questions relevant and material to the matter under investigation and in question in said representation proceeding; and

(c) that petitioner have such other and further relief as may be necessary and proper.

NATIONAL LABOR
RELATIONS BOARD, Petitioner
By Theophil C. Kammholz
General Counsel

/s/ Lloyd R. Fraker
Lloyd R. Fraker,
Chief Law Officer
Tenth Region
National Labor Relations Board
528 Peachtree-Seventh Building
Atlanta 23, Georgia

/s/ Allen Sinsheimer, Jr.
Allen Sinsheimer, Jr., Attorney
Tenth Region
National Labor Relations Board
Croton Hotel
7326 Collins Avenue
Miami Beach, Florida

EXHIBIT "8"

NLRB-31
(8-50)

SUBPENA DUCES TECUM

United States of America
National Labor Relations Board

To Jenkins and Sons, Inc.
34 W. Forsyth Street, Jacksonville, Florida

Request therefor having been duly made by Frank E. Hamilton, Jr., Attorney whose address is 50 Seventh St., (Street)
N. E. Atlanta 23, Georgia.
(City) (State)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE a hearing officer of the National Labor Relations Board, at Plumbing Industry Program Building, 2526 W. Flagler Street in the City of Miami, Florida on the 10th day of January, 1956, at 10:00 o'clock A.M. of that day, to testify in the Matter of Duval Jewelry Company of Mi-

ami, Inc. and Local 1625, Retail Clerks International Association, AFL, Case No. 10-RC-3333

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

1. The books, records and other documents showing all purchases made by said Jenkins and Sons, Inc. during the calendar year from January 1, 1955 through December 31, 1955, or during the last fiscal year of said corporation.

2. The books, records and other documents showing all purchases made by said Jenkins and Sons, Inc. during the calendar year from January 1, 1955 through December 31, 1955, or during the last fiscal year of said corporation, for or on behalf of each of the following named corporations:

Duval Jewelry Company
Duval Jewelry Company of Coral Gables, Inc.
Duval Jewelry Company of Eighth and Main
Duval Jewelry Company of Tallahassee
Duval Jewelry Company of Deland
Duval Jewelry Company of Ocala
Duval Jewelry Company of Fort Lauderdale
Duval Jewelry Company of Daytona Beach
Duval Jewelry Company of Gainesville
Duval Jewelry Company of West Palm Beach, Inc.
Duval Jewelry Company of Miami, Inc.

Duval Jewelry Company of Orlando, Inc.
Duval Jewelry Company of Tampa, Inc.
Duval Jewelry Company of St. Petersburg, Inc.
Duval Jewelry Company at Five Points
Duval Jewelry Company at Colonial Plaza

3. The books, records and other documents showing all sales made by said Jenkins and Sons, Inc. during the calendar year from January 1, 1955 through December 31, 1955, or during the last fiscal year of said corporation to the following-named corporations:

Duval Jewelry Company etc.
as listed in paragraph 2 above

4. The books, records, and other documents showing amount and extent of shares owned by said Duval Jewelry Company of each of the following-named corporations:

Jenkins Jewelry Company
Duval Jewelry Company etc.
as listed in paragraph 2 above

Or in lieu of the foregoing a statement signed and certified to by a responsible official of said corporation setting forth:

1. The total dollar value of purchases made by said Jenkins and Sons, Inc. during the calendar year January 1, 1955 through December 31, 1955, or during its last fiscal year, the names of all persons from whom purchases were made during said period and the total dollar amount of purchases from each of said persons.

(2) The total dollar value of purchases made by said Jenkins and Sons, Inc. during the calendar year January 1, 1955 through December 31, 1955, or during its last fiscal year for or on behalf of each of the following named corporations:

Jenkins Jewelry Company
Duval Jewelry Company, etc.
as listed in paragraph 2 above

The names of all persons from whom such purchases were made during said period and the total dollar amount of such purchases from each of said persons:

(3) The total dollar value of all sales made by said Jenkins and Sons, Inc. during the calendar year from January 1, 1955, through December 31, 1955, or during the last fiscal year of said corporation to each of the following named corporations:

Jenkins Jewelry Company
Duval Jewelry Company, etc.
as listed in paragraph 2 above

(4) The number of shares owned by said Jenkins and Sons, Inc. of each of the following named corporations, and the total number of shares issued by each of those corporations:

Jenkins Jewelry Company
Duval Jewelry Company, etc.
as listed in paragraph 2 above.

In testimony whereof, the seal of the National Labor Relations Board is affixed hereto, and the undersigned, a member of said National Labor Relations Board, has hereunto set his hand at Atlanta, Georgia this 30th day of December, 1955.

B-25987
National Labor
Relations Board
Seal

/s/ Abe Murdock

16-62497-1 GPO

NOTICE TO WITNESS — Witness fees for attendance, subsistence and mileage, under this subpena are payable by the party at whose request the witness is subpenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpena with the voucher when claiming reimbursement.

RETURN OF UNITED STATES MARSHAL SOUTHERN DISTRICT FLORIDA EXECUTED THIS WRIT AT Jacksonville, FLORIDA, ON Jan 3 1956 BY SERVING THE WITHIN-NAMED Jenkins & Sons Inc., A CORPORATION, BY DELIVERING A COPY OF THIS SUMMONS TOGETHER WITH COPY OF COMPLAINT TO Joseph J. Jenkins, AN OFFICER OF THE SAID Jenkins & Sons, Inc., A CORPORATION,

THOMAS H. TRENT,
UNITED STATES MARSHAL

BY: /s/ Jerry D. Dragones

FEE	$ .50
MILEAGE	$ .40
TOTAL	$ .90

EXHIBIT "9"

PETITION TO REVOKE SUBPENA

United States of America
Before The National Labor Relations Board

In the Matter of:

Duval Jewelry Company, and/or Duval Jewelry Company of Miami, Inc.; and/or Jenkins & Sons, Inc. and/or Jenkins Jewelry Company
(Employers)

and Case No. 10-RC-3333

Retail Clerks International Association, Local No. 1625, AFL-CIO
(Petitioner)

COMES NOW, Jenkins & Sons, Inc., a corporation, by its undersigned counsel, and petitions the National Labor Relations Board to revoke Subpena No. B-25987, addressed to said corporation, upon the following grounds, to-wit:

1. Said subpena is oppressive and unreasonable in that it requires on January 10, 1956, in a city 350 miles away from the offices of said company, the production of records or statements of all purchases made by and sales made to or on behalf of some 16 corporations scattered throughout the State of Florida.

2. Said subpena seeks evidence which is immaterial and irrelevant to any proper issue in the above styled cause.

3. Jenkins & Sons, Inc. is not subject to the jurisdiction of the National Labor Relations Board.

4. It does not appear that the said subpena was duly and properly issued according to law.

5. It does not appear that the said subpena was duly and properly issued according to the Rules and Regulations of the National Labor Relations Board.

6. Jenkins & Sons, Inc. has no interest in these proceedings.

7. Said subpena seeks evidence which does not relate to any matter under investigation or in question in the above styled cause.

8. The National Labor Relations Board has no jurisdiction in this cause.

9. Jenkins & Sons, Inc. is not the employer of any employees involved in this cause.

10. There is no cause pending before the National Labor Relations Board entitled "in the Matter of Duval Jewelry Company of Miami, Inc. and Local 1625, Retail Clerks International Association, AFL, Case No. 10-RC-3333", as stated in said subpena.

Petitioner hereby requests opportunity, upon reasonable notice, to orally argue this petition and any answer thereto and any issues involved herein, and thereafter the opportunity to file a written brief upon said issues.

RESPECTFULLY SUBMITTED this 7th day of January, 1956.

HAMILTON & BOWDEN
By /s/ Theo Hamilton
(Theo Hamilton)
Attorneys for said Petitioner

Address of Counsel:

Hamilton & Bowden
Suite 401, Smith Building
Jacksonville 2, Florida

CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of January, 1956, mailed the foregoing Petition to Revoke Subpena to:

National Labor Relations Board
Washington, D. C.

Allen Sinsheimer, Jr., Esq.
Hearing Officer
National Labor Relations Board, Tenth Region
50 Seventh Street, N. E.
Atlanta 23, Georgia

/s/ Theo Hamilton
(Theo Hamilton)

RECITATION — Civil 6761-M:

The Exhibits being numbered from 1 to 7 inclusive, and 10 to 12, inclusive, which are attached to the petition to enforce subpoena in Civil 6761-M are one and the same as attached to the petition in 6759-M-Civil and found on page 13 of this record.

ORDER TO SHOW CAUSE

On February 21, 1956 ORDER TO SHOW CAUSE was filed in the words and figures as follows:

(CAPTION OMITTED)

Petitioner having filed its petition herein for an order requiring Jenkins and Sons, Inc., the Respondent, to obey a certain subpoena duces tecum, and the Court having duly considered the same, it is hereby,

ORDERED, that the Respondent appear in this Court at Miami, Florida, on the 2nd day of March, 1956, at 10:30 o'clock in the forenoon, or as soon thereafter as counsel may be heard, and show cause, if any there be, why the prayer of said petition should not be granted, and it is hereby further,

ORDERED that this order and the petition on which it is based be served on the Respondent, on or before February 25, 1956 and that the Respondent shall file and serve its answer to the petition not later than March 1st, 1956.

Service of this order, of the petition herein, and of the Respondent's answer, in any manner provided by the Rules of Civil Procedure for the District Courts of the United States, or by registered or certified mail, shall constitute good and sufficient service.

Issued at Miami, Florida, this 21st day of February, 1956.

EMETT C. CHOATE
Judge of the District Court of the United States for the Southern District of Florida

---

ANSWER OF RESPONDENT

On March 2, 1956 ANSWER OF RESPONDENT was filed in the words and figures as follows:

(CAPTION OMITTED)

Comes now JENKINS AND SONS, INC., a corporation (hereinafter called the Respondent), by its undersigned counsel, and files this Answer to the Petition to Enforce Subpoena heretofore filed herein and answering, says:

I

The Respondent admits the material allegations contained in Paragraphs numbered 1, 2, 3, 4, 5, 6, 7 and 8 of said Petition.

II

The Respondent answering Paragraph 9 of said Petition, asserts and alleges that Respondent is without knowledge of the allegations contained in said Paragraph 9 except that Respondent admits service of said subpoena or subpoenas upon Respondent as alleged.

III

The Respondent admits the material allegations of Paragraphs 10 and 11 of said Petition.

IV

The Respondent denies the allegations of Paragraph 12 of said Petition and further answering said Paragraph 12 Respondent asserts and alleges that the matter of the revocation of said subpoena or subpoenas was not properly before the Petitioner's Hearing Officer but had been presented to Petitioner.

V

The Respondent, answering Paragraph 13 of said Petition, asserts and alleges that the said Hearing Officer attempted to rule upon Respondent's petition to revoke but that said Hearing Officer did not have the power, jurisdiction or authority to rule upon said petition to revoke nor to issue an order or decision denying said petition to revoke, as will more particularly hereinafter appear.

VI

The Respondent admits the material allegations of Paragraph 14 of said Petition.

VII

The Respondent, answering Paragraph 15 of said Petition, denies that the information sought by said subpoena or said subpoenas is necessary or relevant to the said representation proceeding as alleged in said Paragraph 15.

VIII

The Respondent denies the material allegations of Paragraph 16 of said Petition.

IX

The Respondent, further answering said Petition, and each and every material allegation thereof, asserts and alleges:

1. The said subpoena or subpoenas were not issued by the National Labor Relations Board, or any member thereof, upon application of any party to the said representation proceeding as required by Section 11 of the Labor Management Relations Act, 1947. The said subpoena or supoenas show upon their face that the request for issuance was made by a person not a party to the said proceeding.

2. The Respondent duly filed a petition to revoke the said subpoena or subpoenas with the National Labor Rela-

tions Board, the Petitioner herein, as required by said Section 11 of said Act, and the said National Labor Relations Board has failed and refused to rule upon said Petition to revoke.

3. The said Hearing Officer in said representation proceeding has no power, jurisdiction nor authority to rule upon petitions to revoke subpo nas, this power, jurisdiction and authority being reserved solely and exclusively to the National Labor Relations Board under Section 11 of said Act and is not delegable to any agent or agency of said Board.

4. Said subpoena or subpoenas were not issued according to law, in that there is no authority in the Labor Management Relations Act, 1947, or in any other law applicable to National Labor Relations Board representation hearings, or in any of the Federal Rules of Civil Procedure authorizing the issuance of subpoenas in National Labor Relations Board representation proceeding or enforcement by this Court of subpoenas framed in the alternative, calling for the preparation and production of an unsworn statement by an unidentified person which written statement would not be legal and proper evidence and would not be admissible.

5. On January 3, 1956, service was made of subpoenas duces tecum on Duval Jewelry Company, Duval Jewelry Company of Miami, Inc., Jenkins Jewelry Company and Jenkins and Sons, Inc., and on January 6, 1056, service was made of subpoenas upon Oliver A. Jenkins personally and as President of Duval Jewelry Company, all of said subpoenas requiring the production at the same time, at a hearing on January 10, 1956 in a city 350 miles away from the

principal offices of each of said corporations, of all records or statements showing all purchases made by and all sales made to or throughout the State of Florida in the cities of Coral Gables, Miami, Jacksonville, Tallahassee, DeLand, Ocala, Fort Lauderdale, Daytona Beach, Gainesville, West Palm Beach, Orlando, Tampa and St. Petersburg. To comply with said subpoenas would require the production of all operating books of these several corporations, amounting to scores of ledgers and other books and records, and thousands of individual cards, which would be in the hands of the National Labor Relations Board for an indefinite period of time and to compile statements showing data to be produced would require approximately eight weeks' time, since sales and purchases of the said several corporations involve thousands of transactions over a year's time. The Respondent asserts and alleges that there is only one retail store involved in the National Labor Relations Board proceeding, that said retail store is operated in the City of Miami, Florida, by Duval Jewelry Company of Miami, Inc., a Florida corporation and that there are no employees of any other corporation involved in the said National Labor Relations Board proceeding; that the National Labor Relations Board is attempting a mere "fishing expedition" into the records of all eighteen corporations, wherever located, for the purpose of trying to find some basis of asserting jurisdiction. The Respondent asserts, and the Petitioner well knows, that the Petitioner has no jurisdiction over the single retail store in the City of Miami, involved in the hearing.

6. The said subpoena requires the production of data not material or relevant to any issue in said representation hearing and seeks evidence which does not relate to any

matter under investigation or in question in said hearing, to-wit: The identity of suppliers of all purchases made by Respondent, and the amount of each purchase.

7. The said subpoena is oppressive and unreasonable within the meaning of Rule 45 b of the Federal Rules of Civil Procedure, in that it required the production of all records, showing or statements showing each and every purchase made by Respondent corporation for an entire year, and the name of each person from whom each purchase was made and the dollar value of each and every purchase, each and every purchase made by Respondent for an entire year for or on behalf of each of sixteen different corporations operating retail jewelry stores throughout the State of Florida, the dollar value of each and every purchase and the name of each person from whom such purchases were made on behalf of each of said corporations and the total dollar value of all sales made to each of seventeen other corporations for an entire year; and the amount extent of shares of stock owned by Respondent in seventeen other corporations; all of said data required to be produced in a city 350 miles away from the principal office of Respondent, within less than six working days of the time of service of the subpoena.

Wherefore, having fully answered said Petition, Respondent respectfully prays that the Court will

(1) Deny the prayers of said Petition;

(2) Enter an order quashing said subpoena or subpoenas.

Respectfully submitted this 1st day of March, 1956.

HAMILTON & BOWDEN
By /s/ Theo Hamilton
(Theo Hamilton)
Counsel for Respondent

Address of Counsel for Respondents:

Hamilton & Bowden
401 Smith Building
Jacksonville 2, Florida

CERTIFICATE OF SERVICE

I hereby certify that I have this 1st day of March, 1956, filed the foregoing Answer in this Court and served a copy thereof by registered United States Mail upon the following:

National Labor Relations Board
Washington, D. C.

Lloyd R. Fraker, Esq.
Chief Law Officer
Tenth Region
National Labor Relations Board
528 Peachtree-Seventh Building
Atlanta, Georgia

Allen Sinsheimer, Jr., Esq.
Attorney
Tenth Region

National Labor Relations Board
Croton Hotel
7326 Collins Avenue
Miami Beach, Florida

/s/ Theo Hamilton
(Theo Hamilton)
of Counsel for Respondent

PETITION TO ENFORCE SUBPOENA

On February 21, 1956 PETITION TO ENFORCE SUBPOENA was filed in the words and figures as follows:

In The District Court of The United States
For The Southern District of Florida
Miami Division

National Labor Relations Board,
An Administrative Agency of the
Federal Government
(Petitioner)
vs. Civil No. 6762-M

Jenkins Jewelry Company,
A Corporation
(Respondent)

Now comes the National Labor Relations Board, the Petitioner herein, and for this its petition to enforce a subpoena, states that:

1. Petitioner is an administrative agency of the United States Government created pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. V, Sec. 151 et seq.) hereinafter referred to as the Act.

2. Jenkins Jewelry Company, the Respondent herein, is a corporation duly organized and existing under the laws of the State of Florida, having its principal office at Jacksonville in said state.

3. The Court has jurisdiction of the subject matter of this proceeding under Section 11(2) of the Act [29 USCA 161 (2)] in that the inquiry in aid of which the subpoena hereby sought to be enforced was issued to the Respondent, is and was being carried on within this judicial district.

4. Pursuant to Section 6 of the Act Petitioner has adopted Rules and Regulations (Series 6, effective June 3, 1952), covering the conduct of its operations, which have been duly published in the Federal Register (17 F.R. 4982) as provided for in the Administrative Procedure Act (5 U.S.C. 1002), which Rules and Regulations will be hereinafter referred to as the Rules. Under Section 44 U.S.C. 307 judicial notice may be taken of the Rules.

5. Now and at all times material to the issues herein there is, and was pending before the Petitioner, under Section 9(c) of the Act, a representation proceeding formerly entitled

"In the Matter of

Duval Jewelry Company of Miami, Inc.
(Employer)
and Case No. 10-RC-3333

Local 1625, Retail Clerks International Association, AFL
(Petitioner)

which was instituted on November 22, 1955, on which date Local 1625, Retail Clerks International Association, AFL, hereinafter referred to as the Union, filed a representation petition in the Petitioner's Tenth Regional Office, and the title to which said proceeding was thereafter changed to

"In the Matter of

Duval Jewelry Company, and/or Duval Jewelry Company of Miami, Inc.; and/or Jenkins & Sons, Inc.; and/or Jenkins Jewelry Company[1]
(Employers)
and Case No. 10-RC-3333

Retail Clerks International Association, Local No. 1625, AFL-CIO
(Petitioner)

[1]An amended petition was filed herein on 1-4-56 to add as an employer Jenkins & Sons, Inc., Jenkins Jewelry Company and Duval Jewelry Company of Miami, Inc."

when the Union filed a first amended representation petition therein on January 4, 1956. A copy of each of said

representation petitions marked Exhibits "1" and "2" respectively are hereto attached and hereby made a part hereof.

6. On November 28, 1955, Petitioner issued and served on the parties, its Notice of Representation Hearing in said proceeding in order to investigate the question as to the representation of employees which was raised by the original represenation petition above-described, notifying the parties to said proceeding that a hearing would be held therein on December 5, 1955, a copy of which said Notice of Representation Hearing, marked Exhibit "3", is likewise hereto attached and hereby made a part hereof.

7. On December 2, 1955, Petitioner rescheduled the hearing in said proceeding to December 20, 1955, by its Order Rescheduling Hearing, which was duly served on said parties and a copy of which, marked Exhibit "4" is likewise hereto attached and hereby made a part hereof.

8. On January 4, 1956 the Petitioner issued and served on the parties its Amended Notice of Representation Hearing in said proceeding and also served on each of said parties a copy of the first amended representation petition theretofore filed by the union, whereby the parties were notified of the amendments to said original representation petition, and that the hearing would be held on January 10, 1956, a copy of said Amended Notice of Representation Hearing, marked Exhibit "5" is likewise hereto attached and hereby made a part hereof.

9. On December 30, 1955, as provided for in Section 11(1) of the Act and by Section 102.31 (a) of the Rules, and

at the written requests of counsel for the Petitioner's Regional Director for said Region, the Petitioner issued its subpoena duces tecum No. B-25988 directed to the Respondent herein, requiring its attendance and the production of certain of its records at the hearing in said proceeding which was then scheduled for January 10, 1956, or in lieu of appearing and producing said records at the hearing to submit a written statement giving the information sought to be subpoenaed. Said subpoena was duly served upon the Respondent on January 3, 1956. A true copy of said written requests and of the document designating counsel for said Regional Director, marked Exhibits "6", "6a" and "7" respectively, are likewise hereto attached and hereby made a part hereof. A true copy of said subpoena duces tecum, together with the United States Marshal's return of service thereof, marked Exhibit "8", is likewise hereto attached and hereby made a part hereof.

10. On January 9, 1956, the Respondent filed its timely petition to revoke the subpoena above-described and for permission to argue orally and to submit briefs in support of said petition to revoke. A true copy of said petition to revoke, marked Exhibit "9" is likewise hereto attached and hereby made a part hereof.

11. On January 9, 1956, the representation hearing in said proceeding was postponed to February 2, 1956, by a written order duly served on the parties, a true copy of which, marked Exhibit "10" is likewise hereto attached and hereby made a part hereof.

12. On January 9, 1956, the Petitioner's Hearing Officer before whom said proceeding was then pending, granted,

by telegram, respondent's request for oral argument and for permission to file briefs in support of its said petition to revoke. A true copy of said telegram, marked Exhibit "11" is likewise hereto attached and hereby made a part hereof.

12. On January 26, 1956, the Hearing Officer denied the Respondent's said petition to revoke by a telegraphic order, a true copy of which, marked Exhibit "12" is likewise hereto attached and hereby made a part hereof.

14. On February 2, 1956 the Respondent appeared at said hearing, by its counsel, and refused to respond to said subpoena or to submit the written statement giving the information sought to be subpoenaed.

15. The information sought to be obtained by said subpoena was necessary and relevant to the said representation proceeding in order to determine the extent to which the Respondent's business operations were, either carried on in interstate commerce, or affected such commerce, and to determine its relationship to the other Employees named in said first amended representation petition, so that Petitioner could determine if it will assert its jurisdiction over the Respondent in said representation proceeding.

16. The refusal of the Respondent to produce the records described in said subpoena, or to submit a written statement in lieu of producing the same, constitutes contumacious conduct within the purview of Section 11(2) of the Act, and by thus impeding the Petitioner in the investigation of said representation proceeding now pending before it, the Respondent has prevented and is preventing the

Petitioner from carrying on its duties and functions under the Act.

WHEREFORE, Petitioner, the National Labor Relations Board, respectfully prays:

(a) That an order to show cause issue forthwith directing the Respondent to appear before this Court on a day certain to be fixed in said order, and to show cause, if any there be, why an order should not issue directing it to appear before Petitioner's Hearing Officer, at such time and place as he may designate, and there produce the records described in said subpoena, and give testimony and answer any and all questions relevant and material to the matter under investigation and in question in said representation proceeding;

(b) That upon the return of said order to show cause, an order issue requiring the Respondent to appear before said Hearing Officer, at a time and place to be fixed by him, and there produce the records described in said subpoena, and give testimony and answer any and all questions relevant and material to the matter under investigation and in question in said representation proceeding; and

(c) That Petitioner have such other and further relief as may be necessary and proper.

NATIONAL LABOR
RELATIONS BOARD, Petitioner
By Theophil C. Kammholz
General Counsel

/s/ Lloyd R. Fraker
Lloyd R. Fraker,
Chief, Law Officer
Tenth Region
National Labor Relations Board
528 Peachtree-Seventh Building
Atlanta 23, Georgia

/s/ Allen Sinsheimer, Jr.
Allen Sinsheimer, Jr., Attorney
Tenth Region
National Labor Relations Board
Croton Hotel
7326 Collins Avenue
Miami Beach, Florida

EXHIBIT "6a"

REQUEST FOR SUBPENA DUCES TECUM

John C. Getreu, Regional Director December 30, 1955
Frank E. Hamilton, Jr., Acting Chief Law Officer
Duval Jewelry Company of Miami, Inc.
Case No. 10-RC-3333

It is requested that authorization be granted to issue subpena duces tecum directed to Jenkins Jewelry Company, 34 W. Forsyth Street, Jacksonville, Florida, calling for the production of the same record information and at the same time and place as requested in the subpena directed to Jenkins and Sons, Inc., except the names Jenkins Jewelry Company

and Jenkins and Sons, Inc. will be transposed in the two subpenas.

/s/ F. E. H., Jr.
F. E. H., Jr.

Approved /s/ John C. Getreu
Regional Director

Date 12-30-55

NLRB-31
(8-50)

EXHIBIT "8"

SUBPENA DUCES TECUM

United States of America
National Labor Relations Board

To: Jenkins Jewelry Company
34 W. Forsyth Street, Jacksonville, Florida

Request therefor having been duly made by: Frank E. Hamilton, Jr., Attorney whose address is: 50 Seventh St., (Street)
N. E. Atlanta 23, Georgia
(City) (State)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE: a hearing officer of the National Labor Relations Board, at Plumbing Industry Program Building, 2526 W. Flagler Street in the City of Miami, Florida on the 10th day of January, 1956, at 10:00 o'clock A.M. of that day, to testify in the Matter of Duval Jewelry Company of Miami,

Inc. and Local 1625, Retail Clerks International Association, AFL, Case No. 10-Rc-3333

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

1. The books, records and other documents showing all purchases made by said Jenkins Jewelry Company during the calendar year from January 1, 1955 through December 31, 1955, or during the last fiscal year of said corporation.

2. The books, records and other documents showing all purchases made by said Jenkins Jewelry Company during the calendar year from January 1, 1955 through December 31, 1955, or during the last fiscal year of said corporation, for or on behalf of each of the following named corporations:

Duval Jewelry Company
Duval Jewelry Company of Coral Gables, Inc.
Duval Jewelry Company of Eighth and Main
Duval Jewelry Company of Tallahassee
Duval Jewelry Company of Deland
Duval Jewelry Company of Ocala
Duval Jewelry Company of Fort Lauderdale
Duval Jewelry Company of Daytona Beach
Duval Jewelry Company of Gainesville
Duval Jewelry Company of West Palm Beach, Inc.
Duval Jewelry Company of Miami, Inc.
Duval Jewelry Company of Orlando, Inc.

Duval Jewelry Company of Tampa, Inc.
Duval Jewelry Company of St. Petersburg, Inc.
Duval Jewelry Company at Five Points
Duval Jewelry Company at Colonial Plaza

3. The books, records and other documents showing all sales made by said Jenkins Jewelry Company during the calendar year from January 1, 1955 through December 31, 1955, or during the last fiscal year of said corporation to the following-named corporations:

Duval Jewelry Company etc.
as listed in paragraph 2 above

4. The books, records, and other documents showing amount and extent of shares owned by said Jenkins Jewelry Company of each of the following
/s/ FEHJr

named corporations:

Jenkins and Sons, Inc.
Duval Jewelry Company etc.
as listed in paragraph 2 above

Or in lieu of the foregoing a statement signed and certified to by a responsible official of said corporation setting forth:

(1) The total dollar value of purchases made by said Jenkins Jewelry Company during the calendar year January 1, 1955 through December 31, 1955, or during its last fiscal year, the names of all persons from whom purchases were made during said period and

the total dollar amount of purchases from each of said persons.

(2) The total dollar value of purchases made by said Jenkins Jewelry Company during the calendar year January 1, 1955 through December 31, 1955, or during its last fiscal year for or on behalf of each of the following named corporations:

Jenkins and Sons, Inc.
Duval Jewelry Company etc.
as listed in paragraph 2 above

The names of all persons from whom such purchases were made during said period and the total dollar amount of such purchases from each of said persons:

(3) The total dollar value of all sales made by said Jenkins Jewelry Company during the calendar year from January 1, 1955, through December 31, 1955, or during the last fiscal year of said corporation to each of the following named corporations:

Jenkins and Sons, Inc.
Duval Jewelry Company etc.
as listed in paragraph 2 above

(4) The number of shares owned by said Jenkins and Sons, Inc. of each of the following named corporations, and the total number of shares issued by each of these corporations:

Jenkins and Sons, Inc.
Duval Jewelry Company etc.
as listed in paragraph 2 above

B-25988 In testimony whereof, the seal of the National Labor Relations Board is affixed hereto, and the undersigned, a member of said National Labor Relations Board, has hereunto set his hand at Atlanta, Georgia this 30th day of December, 1955.

/s/ Abe Murdock

NOTICE TO WITNESS — Witness fees for attendance, subsistence, and mileage, under this subpena are payable by the party at whose request the witness is subpenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpena with the voucher when claiming reimbursement.

RETURN OF UNITED STATES MARSHAL SOUTHERN DISTRICT FLORIDA EXECUTED THIS WRIT AT JACKSONVILLE, FLORIDA, ON JAN 3 1956, BY SERVING THE WITHIN NAMED JENKINS JEWELRY CO., A CORPORATION, by DELIVERING A COPY OF THIS SUMMONS TOGETHER WITH COPY OF COMPLAINT TO L. K. MAXWELL, AN OFFICE OF THE SAID JENKINS JEWELRY CO., A CORPORATION.

THOMAS H. TRENT,
UNITED STATES MARSHAL
BY: /s/ Jerry D. Dragones
Deputy.

FEE	$ .50
MILEAGE	.10
TOTAL	.60

EXHIBIT "9"

PETITION TO REVOKE SUBPENA

United States of America
Before The National Labor Relations Board

In the Matter of:

Duval Jewelry Company, and/or Duval Jewelry Company of Miami, Inc; and/or Jenkins & Sons, Inc.; and/or Jenkins Jewelry Company
(Employers)

and Case No. 10-RC-3333

Retail Clerks International Association, Local No. 1625 — AFL-CIO
(Petitioner)

COMES NOW, Jenkins Jewelry Company, a corporation, by its undersigned counsel, and petitions the National Labor Relations Board to Revoke Subpena No. B-25988 addressed to said corporation, upon the following grounds, to-wit:

1. Said subpena is oppressive and unreasonable in that it requires the production of records of all purchases made, or a statement of all purchases, and the names of all persons from whom purchases were made, by said company, for an entire year to be produced in a city 350 miles away from the offices of said company on January 10, 1956.

2. Said subpena is oppressive and unreasonable in that it requires on January 10, 1956, in a city 350 miles away from

the offices of said company, the production of records or statements of all purchases for or on behalf of and all sales made to sixteen different corporations scattered throughout the State of Florida.

3. Said subpena seeks evidence which is immaterial and irrelevant to any proper issue in the above-styled cause.

4. Jenkins Jewelry Company is not subject to the jurisdiction of the National Labor Relations Board.

5. It does not appear that the said subpena was duly and properly issued according to law.

6. It does not appear that the said subpoena was duly and properly issued according to the Rules and Regulations of the National Labor Relations Board.

7. Jenkins Jewelry Company has no interest in these proceedings.

8. Said subpena seeks evidence which does not relate to any matter under investigation or in question in the above-styled cause.

9. The National Labor Relations Board has no jurisdiction in this cause.

10. Jenkins Jewelry Company is not the employer of any employees involved in this cause.

11. There is no cause pending before the National Labor Relations Board entitled "in the Matter of Duval Jewelry

Company of Miami, Inc. and Local 1625, Retail Clerks International Association, AFL, Case No. 10-RC-3333", as stated in said subpena.

Petitioner hereby requests opportunity, upon reasonable notice, to orally argue this petition and any answer thereto and any issues involved herein, and thereafter the opportunity to file a written brief upon said issues.

RESPECTFULLY SUBMITTED this 7th day of January, 1956.

HAMILTON & BOWDEN

By /s/ Theo Hamilton
(Theo Hamilton)
Attorneys for said petitioner

Address of Counsel:

Hamilton & Bowden
Suite 401, Smith Building
Jacksonville 2, Florida

CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of January, 1956, mailed the foregoing Petition to Revoke Subpena to:

National Labor Relations Board
Washington, D. C.

Allen Sinsheimer, Jr., Esq.
Hearing Officer
National Labor Relations Board, Tenth Region
50 Seventh Street, N.E.
Atlanta 23, Georgia

/s/ Theo Hamilton
(Theo Hamilton)

RECITATION CIVIL 6762-M

The Exhibits being numbered from 1 to 6 inclusive, 7, 10 to 12 inclusive, which are attached to the petition to enforce subpoena in Civil 6762-M are one and the same as attached to the petition in 6759-M-Civil and found on page 13 of this record.

ORDER TO SHOW CAUSE

On February 21, 1956 ORDER TO SHOW CAUSE was filed in the words and figures as follows:

(CAPTION OMITTED)

Petitioner having filed its petition herein for an order requiring Jenkins Jewelry Company, the Respondent, to obey a certain subpoena duces tecum, and the Court having duly considered the same, it is hereby,

ORDERED that the Respondent appear in this Court at Miami, Florida, on the 2nd day of March, 1956, at 10:30 o'clock in the forenoon, or as soon thereafter as counsel may be heard, and show cause, if any there be, why the prayer of said petition should not be granted, and it is hereby further,

ORDERED, that this order and the petition on which it is based be served on the Respondent, on or before February 25, 1956, and that the Respondent shall file and serve its answer to the petition not later than March 1st, 1956. Service of this order, of the petition herein, and of the Respondent's answer, in any manner provided by the Rules of Civil Procedure for the District Courts of the United

States, or by registered or certified mail, shall constitute good and sufficient service.

Issued at Miami, Florida, this 21st day of February, 1956.

EMETT C. CHOATE
Judge of the District Court of the United States for the Southern District of Florida

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ANSWER OF RESPONDENT

On March 2, 1956 ANSWER OF RESPONDENT was filed in the words and figures as follows:

(CAPTION OMITTED).

Comes now JENKINS JEWELRY COMPANY, a corporation (hereinafter called the Respondent), by its undersigned counsel, and files this Answer to the Petition to Enforce Subpoena heretofore filed herein and answering, says:

I

The Respondent admits the material allegations contained in Paragraphs numbered 1, 2, 3, 4, 5, 6, 7 and 8 of said Petition.

II

The Respondent, answering Paragraph 9 of said Petition, asserts and alleges that Respondent is without knowledge of the allegations contained in said Paragraph 9 except that Respondent admits service of said subpoena or subpoenas upon Respondent as alleged.

III

The Respondent admits the material allegations of Paragraphs 10 and 11 of said Petition.

IV

The Respondent denies the allegations of Paragraph 12 of said petition and further answering said Paragraph 12 Respondent asserts and alleges that the matter of the revocation of said subpoena or subpoenas was not properly before the Petitioner's Hearing Officer but had been presented to Petitioner.

V

The Respondent, answering Paragraph 13 of said Petition, asserts and alleges that the said Hearing Officer attempted to rule upon Respondent's petition to revoke but that said Hearing Officer did not have the power, jurisdiction or authority to rule upon said petition to revoke nor to issue an order of decision denying said petition to revoke, as will more particularly hereinafter appear.

VI

The Respondent admits the material allegations of Paragraph 14 of said petition.

VII

The Respondent, answering Paragraph 15 of said Petition, denies that the information sought by said subpoena or said subpoenas is necessary or relevant to the said representation proceeding as alleged in said Paragraph 15.

VIII

The Respondent denies the material allegations of Paragraph 16 of said Petition.

IX

The Respondent, further answering said Petition, and each and every material allegation thereof, asserts and alleges:

1. The said subpoena or subpoenas were not issued by the National Labor Relations Board, or any member thereof, upon application of any party to the said representation proceeding as required by Section 11 of the Labor Management Relations Act, 1947. The said subpoena or subpoenas show upon their face that the request for issuance was made by a person not a party to the said proceeding.

2. The Respondent duly filed a petition to revoke the said subpoena or subpoenas with the National Labor Relations

Board the Petitioner herein, as required by said Section 11 of said Act, and the said National Labor Relations Board has failed and refused to rule upon said petition to revoke.

3. The said Hearing Officer in said representation proceeding has no power, jurisdiction nor authority to rule upon petitions to revoke subpoenas, this power, jurisdiction and authority being reserved solely and exclusively to the National Labor Relations Board under Section 11 of said Act and is not delegable to any agent or agency of said board.

4. Said subpoena or subpoenas were not issued according to law, in that there is no authority in the Labor Management Relations Act, 1947, or in any other law applicable to National Labor Relations Board representation hearings, or in any of the Federal Rules of Civil Procedure authorizing the issuance of subpoenas in National Labor Relations Board representation proceeding or enforcement by this Court of subpoenas framed in the alternative, calling for the preparation and production of an unsworn statement by an unidentified person which written statement would not be legal and proper evidence and would not be admissible.

5. On January 3, 1956, service was made of subpoenas duces tecum on Duval Jewelry Company, Duval Jewelry Company of Miami, Inc., Jenkins Jewelry Company and Jenkins and Sons, Inc., and on January 6, 1956, service was made of subpoenas upon Oliver A. Jenkins personally and as President of Duval Jewelry Company, all of said subpoenas requiring the production, at the same time, at a hearing on January 10, 1956, in a city 350 miles away from the principal offices of each of said corporations, of all records or statements showing all purchases made by and all

sales made to or on behalf of some eighteen corporations operating sixteen retail jewelry stores throughout the State of Florida in the cities of Coral Gables, Miami, Jacksonville, Tallahassee, DeLand, Ocala, Fort Lauderdale, Daytona Beach, Gainesville, West Palm Beach, Orlando, Tampa and St. Petersburg. To comply with said subpoenas would require the production of all operating books of these several corporations, amounting to scores of ledgers and other books and records, and thousands of individual cards, which would be in the hands of the National Labor Relations Board for an indefinite period of time and to compile statements showing data to be produced would require approximately eight weeks' time, since sales and purchases of the said several corporations involve thousands of transactions over a year's time. The Respondent asserts and alleges that there is only one retail store involved in the National Labor Relations Board proceeding; that said retail store is operated in the City of Miami, Florida, by Duval Jewelry Company of Miami, Inc., a Florida corporation and that there are no employees of any other corporation involved in the said National Labor Relations Board proceeding; that the National Labor Relations Board is attempting a mere "fishing expedition" into the records of all eighteen corporations, wherever located, for the purpose of trying to find some basis of asserting jurisdiction. The Respondent asserts, and the Petitioner well knows, that the Petitioner has no jurisdiction over the single retail store in the City of Miami, involved in the hearing.

6. The said subpoena requires the production of data not material or relevant to any issue in said representation hearing and seeks evidence which does not relate to any matter under investigation or in question in said hearing,

to-wit: The identity of suppliers of all purchases made by Respondent, and the amount of each purchase.

7. The said subpoena is oppressive and unreasonable within the meaning of Rule 45 b of the Federal Rules of Civil Procedure in that it required the production of all records showing, or statements showing each and every purchase made by Respondent for an entire year and the name of every person from whom each purchase was made and the amount of each and every purchase; and each and every purchase for an entire year made for or on behalf of each of sixteen other corporations operating retail jewelry stores throughout the State of Florida, and the name of every person from whom each purchase was made and the dollar amount of each such purchase and each and every sale for an entire year made to sixteen other corporations and the dollar amount of each such sale; all of said data required to be produced in a city 350 miles away from the principal office of Respondent, within less than six working days of the time of service of the subpoena.

Wherefore, having fully answered said Petition, Respondent respectfully prays that the court will

(1) Deny the prayers of said Petition;

(2) Enter an order quashing said subpoena or subpoenas.

Respectfully submitted this 1st day of March, 1956.

HAMILTON & BOWDEN
By /s/ Theo Hamilton
(Theo Hamilton)
Counsel for Respondent

Address of Counsel for Respondents:

Hamilton & Bowden
401 Smith Building
Jacksonville 2, Florida

CERTIFICATE OF SERVICE

I hereby certify that I have this 1st day of March, 1956 filed the foregoing Answer in this Court and served a copy thereof by registered United States Mail upon the following

National Labor Relations Board
Washington, D. C.

Lloyd R. Fraker, Esq.
Chief Law Officer
Tenth Region
National Labor Relations Board
528 Peachtree-Seventh Building
Atlanta, Georgia

Allen Sinsheimer, Jr., Esq.
Attorney
Tenth Region

National Labor Relations Board
Croton Hotel
7326 Collins Avenue
Miami Beach, Florida

/s/ Theo Hamilton
(Theo. Hamilton)
of Counsel for Respondent

PETITION TO ENFORCE SUBPOENAS

On February 21, 1956 PETITION TO ENFORCE SUBPOENA was filed in the words and figures as follows:

In The District Court of the United States
For The Southern District of Florida
Miami Division

National Labor Relations Board,
An Administrative Agency of the
Federal Government
(Petitioner)
vs. Civil No. 6763-M

Oliver A. Jenkins
(Respondent)

Now comes the National Labor Relations Board, the Petitioner herein, and for this its petition to enforce subpoenas, states that:

1. Petitioner is an administrative agency of the United States Government created pursuant to the National Labor Relations Act, as amended, (61 Stat. 136, 29 USC., Supp. V, Sec. 151, et seq.), hereinafter referred to as the Act.

2. Petitioner is informed and believes that Oliver A. Jenkins, the Respondent herein, is, and at all times material to the issues herein, was, the president of the following named corporations: Jenkins and Sons, Inc., Duval Jewelry Company, Duval Jewelry Company of Coral Gables, Inc., Duval Jewelry Company at Eight and Main, Duval Jewelry Company of Tallahassee, Duval Jewelry Company of Deland, Duval Jewelry Company of Ocala, Duval Jewelry Company of Fort Lauderdale, Duval Jewelry Company of Daytona Beach, Duval Jewelry Company of Gainesville, Duval Jewelry Company of West Palm Beach, Inc., Duval Jewelry Company of Miami, Inc., Duval Jewelry Company of Orlando, Inc., Duval Jewelry Company of Tampa, Inc., Duval Jewelry Company of St. Petersburg, Inc., Duval Jewelry Company at Five Points, Duval Jewelry Company at Colonial Plaza, and Jenkins Jewelry Company, that said corporations are engaged in the operation of a chain or group of retail jewelry stores in the State of Florida, and that as the president thereof the Respondent has full knowledge of such operations and of the policy of said corporations as to their employees.

3. The Court has jurisdiction of the subject matter of this proceeding under Section 11(2) of the Act [29 USCA 161 (2)] in that the inquiry in aid of which the subpoenas hereby sought to be enforced were issued to the Respondent, is and was being carried on within this judicial district.

4. Pursuant to Section 6 of the Act Petitioner has adopted Rules and Regulations (Series 6, effective June 3, 1952), covering the conduct of its operations, which have been duly published in the Federal Register (17 F.R. 4982) as provided for in the Administrative Procedure Act (5 U.S.C. 1002) which Rules and Regulations will be hereinafter referred to as the Rules. Under Section 44 U.S.C. 307 judicial notice may be taken of the Rules.

5. Now and at all times material to the issues herein there is, and was pending before the Petitioner, under Section 9(c) of the Act, a representation proceeding formerly entitled

"In the Matter of

Duval Jewelry Company of Miami, Inc.
(Employer)
and Case No. 10-RC-3333

Local 1625, Retail Clerks International
Association, AFL
(Petitioner)"

which was instituted on November 22, 1955, on which date Local 1625, Retail Clerks International Association, AFL, hereinafter referred to as the Union, filed a representation petition in the Petitioner's Tenth Regional Office, and the title on which said proceeding was thereafter changed to.

"In the Matter of

Duval Jewelry Company, and/or Duval Jewelry Company of Miami, Inc.; and/or Jenkins & Sons, Inc.; and/or Jenkins Jewelry Company[1]

(Employers)

and Case No. 10-RC-3333

Retail Clerks International Association, Local No. 1625, AFL-CIO

(Petitioner)

[1]An amended petition was filed herein on 1-4-56 to add as an employer Jenkins & Sons, Inc., Jenkins Jewelry Company and Duval Jewelry Company of Miami, Inc."

when the Union filed a first amended representation petition therein on January 4, 1956. A copy of each of said representation petitioners marked Exhibits "1" and "2" respectively are hereto attached and hereby made a part hereof.

6. On November 28, 1955, Petitioner issued and served on the parties, its Notice of Representation Hearing in said proceeding in order to investigate the question as to the representation of employees which was raised by the original representation petition above-described, notifying the parties to said proceeding that a hearing would be held therein on December 5, 1955, a copy of which said Notice of Representation Hearing, marked Exhibit "3", is likewise hereto attached and hereby made a part hereof.

7. On December 2, 1955, Petitioner rescheduled the hearing in said proceeding to December 20, 1955, by its Order Rescheduling Hearing, which was duly served on said parties and a copy of which, marked Exhibit "4" is likewise hereto attached, and hereby made a part hereof.

8. On January 4, 1956, the Petitioner issued and served on the parties its Amended Notice of Representation Hearing in said proceeding and also served on each of said parties a copy of the first amended representation petition theretofore filed by the union, whereby the parties were notified of the amendments to said original representation petition, and that the hearing would be held on January 10, 1956, a copy of said Amended Notice of Representation Hearing, marked Exhibit "5" is likewise hereto attached and hereby made a part hereof.

9. On December 30, 1955, as provided for in Section 11(1) of the Act and by Section 102.31(a) of the Rules, and at the written requests of counsel for the Petitioner's Regional Director for said Region, the Petitioner issued its subpoena duces tecum No. B-25989 directed to the Respondent herein, requiring his attendance at the hearing in said representation proceeding which was then scheduled for January 10, 1956, and the production of certain records showing his stock ownership and other evidence of beneficial interest in said corporations, or in lieu of appearing and producing said records at the hearing, to submit a written statement giving the information sought to be subpoenaed, and on the same day and in like manner, issued its subpoena ad testificandum No. A-75787, also directed to the Respondent requiring his attendance and testimony at said hearing. Both of which said subpoenas were duly served on

the Respondent on January 6, 1956. True copies of said written requests, and of said subpoenas together with the United States Marshal's return of service of said subpoenas, marked Exhibit "6", Exhibit "6b", Exhibit "8" and Exhibit "8A" respectively, are likewise hereto attached and hereby made a part hereof.

10. On January 13, 1956, the Respondent filed his timely separate petitions to revoke each of said subpoenas and for permission to argue orally and to submit briefs in support of said petitions to revoke. True copies of said petitions to revoke marked Exhibit "9" and "9a" respectively are likewise hereto attached and hereby made a part hereof.

11. On January 9, 1956, the representation hearing in said proceeding was postponed to February 2, 1956, by a written order duly served on the parties, a true copy of which, marked Exhibit "10" is likewise hereto attached and hereby made a part hereof.

12. On January 9, 1956, the Petitioner's Hearing Officer, before whom said proceeding was then pending, granted, by telegram, respondent's request for oral argument and for permission to file briefs in support of its said petition to revoke. A true copy of said telegram, marked Exhibit "11" is likewise hereto attached and hereby made a part hereof.

13. On January 26, 1956 the Hearing Officer denied the Respondents said petitions to revoke by a telegraphic order, a true copy of which, marked Exhibit "12" is likewise, attached and hereby made a part hereof.

14. On February 2, 1956, the Respondent appeared at said hearing, by his counsel, and refused to respond to said subpoenas or to submit a written statement giving the information sought to be obtained by said subpoena duces tecum No. B-25989.

15. The information sought to be obtained by said subpoena duces tecum No. B-25989 and the testimony of the Respondent sought to be obtained by said subpoena ad testificandum No. A-75787 were necessary and relevant to said representation proceeding in order, to determine the extent to which the business operations of the corporations listed in paragraph 2 above (including the employers involved in said representation proceeding) were, either carried on in interstate commerce, or affected such commerce, and to determine the interrelationship between said corporations and the extent to which the labor relations policies of the respective employers named in said representation proceedings, are integrated and administered so that Petitioner could determine if it will assert its jurisdiction over said employers in said representation proceeding.

16. The refusal of the Respondent to produce the records described in said subpoena duces tecum No. B-25989 or to submit a written statement in lieu of producing said records, and to appear and testify at said hearing in response to said subpoena ad testificandum No. A-75787 constitutes contumacious conduct within the purview of Section 11(2) of the Act, and by thus impeding Petitioner in the investigation of said representation proceeding now pending before it, the Respondent has prevented and is preventing the Petitioner from carrying on its duties and functions under the Act.

WHEREFORE, Petitioner, the National Labor Relations Board, respectfully prays:

(a) That an order to show cause issue forthwith directing the Respondent to appear before this Court on a day certain to be fixed in said order, and to show cause, if any there be, why an order should not issue directing him to appear before Petitioner's Hearing Officer, at such time and place as he may designate, and there produce the records described in said subpoena duces tecum, and give testimony and answer any and all questions relevant and material to the matter under investigation and in question in said representation proceedings, as required by said subpoena ad testificandum;

(b) that upon the return of said order to show cause, an order issue requiring the Respondent to appear before said Hearing Officer, at a time and place to be fixed by him, and there produce the records described in said subpoena duces tecum and give testimony and answer any and all questions relevant and material to the matter under investigation and in question in said representation proceedings, as required by said subpoena ad testificandum; and

(c) that Petitioner have such other and further relief as may be necessary and proper.

NATIONAL LABOR
RELATIONS BOARD, Petitioner
By Theophil C. Kammholz
General Counsel

/s/ Lloyd R. Fraker
Lloyd R. Fraker.
Chief Law Officer
Tenth Region
National Labor Relations Board
528 Peachtree-Seventh Building
Atlanta 23, Georgia

/s/ Allen Sinsheimer, Jr.
Allen Sinsheimer, Jr., Attorney
Tenth Region
National Labor Relations Board
Croton Hotel
7326 Collins Avenue
Miami Beach, Florida

EXHIBIT "6b"

REQUEST FOR SUBPENA AD TESTIFICANDUM

John C. Getreu, Regional Director December 30, 1955
Frank E. Hamilton, Jr., Acting Chief Law Officer
Duval Jewelry Company of Miami, Inc.
Case No. 10-RC-3333

It is requested that authorization be granted to issue subpena ad testificandum to the individual named below directing him to appear and testify before a Hearing Officer of the National Labor Relations Board at the Plumbing Industry Program Building, 2526 W. Flagler Street, Miami, Florida, at 10:00 A.M. on January 10, 1956; in the matter of Duval

Jewelry Company of Miami, Inc. and Local 1625, Retail Clerks International Association, AFL:

Oliver A. Jenkins, President
Duval Jewelry Company
34 W. Forsyth Street
Jacksonville, Florida

F. E. H., Jr.

Approved /s/ John C. Getreu
Regional Director

December 30, 1955

Approved /s/ Frank E. Hamilton, Jr.
Acting Chief Law Officer

December 30, 1955

NLRB-31
(8-50)

EXHIBIT "8"

SUBPENA DUCES TECUM

United States of America
National Labor Relations Board

To Mr. Oliver A. Jenkins
34 W. Forsyth Street, Jacksonville, Florida

Request therefor having been duly made by Frank E. Hamilton, Jr., Attorney whose address is 50 Seventh St., (Street)
N. E. Atlanta 23, Georgia
(City) (State)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE a hearing officer of the National Labor Relations Board at Plumbing Industry Program Building; 2526 W. Flagler Street in the City of Miami, Florida on the 10th day of January, 1956, at 10:00 o'clock a.m. of that day, to testify in the Matter of Duval Jewelry Company of Miami, Inc. and Local 1625, Retail Clerks International Association, AFL, Case No. 10-RC-3333

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

1. All shares of stock and other evidence of beneficial

interest which the aforesaid Oliver A. Jenkins owns in each of the following-named corporations:

Jenkins and Sons, Inc.
Jenkins Jewelry Company
Duval Jewelry Company
Duval Jewelry Company of Coral Gables, Inc.
Duval Jewelry Company at Eighth and Main
Duval Jewelry Company of Tallahassee
Duval Jewelry Company of Deland
Duval Jewelry Company of Ocala
Duval Jewelry Company of Fort Lauderdale
Duval Jewelry Company of Daytona Beach
Duval Jewelry Company of Gainesville
Duval Jewelry Company of West Palm Beach, Inc.
Duval Jewelry Company of Miami, Inc.
Duval Jewelry Company of Orlando, Inc.
Duval Jewelry Company of Tampa, Inc.
Duval Jewelry Company of St. Petersburg, Inc.
Duval Jewelry Company at Five Points
Duval Jewelry Company at Colonial Plaza

Or in lieu of producing the foregoing to produce a statement signed and certified to by said Oliver A. Jenkins setting forth (1) the number of shares of stock owned by said Oliver A. Jenkins in each of the following-named corporations:

(1) Jenkins and Sons, Inc., etc
as listed in paragraph 1 aboye

(2) All other beneficial interest which said Oliver A.

Jenkins has in each of the corporations listed aforesaid above.

B-25989 In testimony whereof, the seal of the National Labor Relations Board is affixed hereto, and the undersigned, a member of said National Labor Relations Board, has hereunto set his hand at Atlanta, Georgia this 30th day of December, 1955.

(SEAL) /s/ Abe Murdock

NOTICE TO WITNESS. — Witness fees for attendance, subsistence, and mileage, under this subpena are payable by the party at whose request the witness is subpenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpena with the voucher when claiming reimbursement.

RETURN OF UNITED STATES MARSHAL SOUTHERN DISTRICT OF FLORIDA EXECUTED THIS WRIT AT Jacksonville, FLORIDA, ON Jan. 6, 1956, BY DELIVERING A TRUE COPY HEREOF TO Oliver A. Jenkins.

THOMAS H. TRENT,
UNITED STATES MARSHAL

BY: /s/ Jerry D. Dragones

FEE	$ .50
MILEAGE	$ .10
TOTAL	$ .60

NLRB-32
(6-50)

EXHIBIT "8a"

SUBPENA

United States of America
National Labor Relations Board

To Mr. Oliver A. Jenkins, President
Duval Jewelry Company
34 W. Forsyth Street, Jacksonville, Florida

Request therefor having been duly made by Frank E. Hamilton, Jr., Attorney whose address is 50 Seventh St., (Street)
N. E. Atlanta 23, Georgia
(City) (State)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR before a hearing officer of the National Labor Relations Board, at Plumbing Industry Program Building, 2526 W. Flagler Street in the City of Miami, Florida on the 10th day of January, 1956, at 10:00 o'clock A.m. of that day, to testify in the Matter of Duval Jewelry Company of Miami, Inc, and Local 1625, Retail Clerks International Association, AFL, Case No. 10-RC-3333.

A-75787
National Labor Relations Board Seal

In testimony whereof, the seal of the National Labor Relations Board is affixed hereto, and the undersigned, a member of said National Labor Relations

Board, has hereunto set his hand at Atlanta 23, Georgia this 30th d. v of December, 1955.

/s/ Abe Murdock

16-4457-1 GPO

NOTICE TO WITNESS. — Witness fees for attendance, subsistence, and mileage, under this subpena are payable by the party at whose request the witness is subpenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpena with the voucher when claiming reimbursement.

RETURN OF UNITED STATES MARSHALL SOUTHERN DISTRICT OF FLORIDA, EXECUTED THIS WRIT AT Jacksonville, FLORIDA, ON Jan 6 1956, BY DELIVERING A TRUE COPY HEREOF TO Oliver A. Jenkins.

THOMAS H. TRENT,
UNITED STATES MARSHAL

BY: /s/ Jerry D. Dragones
Deputy.

FEE	$ .50
MILEAGE	$ .10
TOTAL	$ .60

EXHIBIT "9"

PETITION TO REVOKE SUBPENA

United States of America
Before the National Labor Relations Board

In the Matter of:

Duval Jewelry Company, and/or Duval Jewelry Company of Miami, Inc.; and/or Jenkins & Sons, Inc. and/or Jenkins Jewelry Company
(Employers)
and Case No. 10-RC-3333

Retail Clerks International Association, Local No. 1625, AFL-CIO

COMES NOW, Oliver A. Jenkins, by his undersigned counsel, and petitions the National Labor Relations Board to revoke Subpena No. B-25989, upon the following grounds, to-wit:

1. The National Labor Relations Board has no jurisdiction in this cause.

2. Said Subpena seeks evidence which is immaterial and irrelevant to any issue in this cause.

3. It does not appear that said Subpena was duly and properly issued according to law.

4. It does not appear that the said Subpena was duly and properly issued according to the Rules and Regulations of the National Labor Relations Board.

5. Said Subpena seeks evidence which does not relate to any matter under investigation or in question in this cause.

6. There is no cause pending before the National Labor Relations Board entitled "in the Matter of Duval Jewelry Company of Miami, Inc. and Local 1625, Retail Clerks International Association, AFL, Case No. 10-RC-3333", as stated in said Subpena.

7. Said Subpena is illegal and void in that it is framed in the alternative.

8. Said Subpena is illegal and void in that it calls for a statement which is inadmissible in evidence.

9. Said Subpena is so vague, indefinite and uncertain as to its requirements that petitioner cannot answer them.

Petitioner hereby requests opportunity, upon reasonable notice, to orally argue this petition and any answer thereto and any issues involved herein, and thereafter the opportunity to file a written brief upon said issues.

RESPECTFULLY SUBMITTED this 11th day of January, 1956.

HAMILTON & BOWDEN

By /s/ Theo Hamilton
(Theo Hamilton)
Attorneys for said Petitioner

CERTIFICATE OF SERVICE

I hereby certify that I have this 11th day of January, 1956, mailed the foregoing Petition to Revoke Subpena to:

National Labor Relations Board
Washington, D. C.

Allen Sinsheimer, Jr., Esq.
Hearing Officer
National Labor Relations Board, Tenth Region
50 Seventh Street, N.E.
Atlanta 23, Georgia

/s/ Theo Hamilton
(Theo Hamilton)

RECITATION CIVIL 6763-M

The Exhibits being numbered from 1 to 6 inclusive, 7, 10 to 12 inclusive, which are attached to the petition to enforce subpoena in Civil 6763-M are one and the same as attached to the petition in 6759-M and found on page 13 of this record.

ORDER TO SHOW CAUSE

On February 21, 1956 ORDER TO SHOW CAUSE was filed in the words and figures as follows:

(CAPTION OMITTED)

Petitioner having filed its petition herein for an order requiring Oliver A. Jenkins, the Respondent, to obey a certain subpoena duces tecum and to obey a certain subpoena ad testificandum, and the court having duly considered the same, it is hereby,

ORDERED, that the Respondent appear in this Court at Miami, Florida, on the 2nd day of March, 1956, at 10:30 o'clock in the forenoon, or as soon thereafter as counsel may be heard, and show cause, if any there be, why the prayer of said petition should not be granted, and it is hereby further,

ORDERED, that this order and the petition on which it is based be served on the Respondent, on or before February 25, 1956, and that the Respondent shall file and serve his answer to the petition not later than March 1st, 1956. Service of this order, of the petition herein, and of the Respondent's answer, in any manner provided by the Rules of Civil Procedure for the District Courts of the United States, or by registered or certified mail, shall constitute good and sufficient service.

Issued at Miami, Florida, this 21st day of February, 1956.

EMETT C. CHOATE
Judge of the District Court of the United States for the Southern District of Florida

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ANSWER OF RESPONDENT

On March 2, 1956 ANSWER OF RESPONDENT was filed in the words and figures as follows:

(CAPTION OMITTED)

Comes now OLIVER A. JENKINS (hereinafter called the Respondent), by his undersigned counsel, and files this Answer to the Petition to Enforce Subpoena heretofore filed herein and answering, says:

I

The Respondent admits the material allegations contained in Paragraphs numbered 1, 2, 3, 4, 5, 6, 7 and 8 of said Petition.

II

The Respondent, answering Paragraph 9 of said Petition, asserts and alleges that Respondent is without knowledge of the allegations contained in said Paragraph 9 except that

Respondent admits service of said subpoena or subpoenas upon Respondent as alleged.

III

The Respondent admits the material allegations of Paragraphs 10 and 11 of said Petition.

IV

The Respondent denies the allegations of Paragraph 12 of said Petition and further answering said Paragraph 12 Respondent asserts and alleges that the matter of the revocation of said subpoena or subpoenas was not properly before the Petitioner's Hearing Officer but had been presented to Petitioner.

V

The Respondent, answering Paragraph 13 of said Petition, asserts and alleges that the said Hearing Officer attempted to rule upon Respondent's petition to revoke but that said Hearing Officer did not have the power, jurisdiction or authority to rule upon said petition to revoke nor to issue an order or decision denying said petition to revoke, as will more particularly hereinafter appear.

VI

The Respondent admits the material allegations of Paragraph 14 of said Petition.

VII

The Respondent, answering Paragraph 15 of said Petition, denies that the information sought by said subpoena or said subpoenas is necessary or relevant to the said representation proceeding as alleged in said Paragraph 15.

VIII

The Respondent denies the material allegations of Paragraph 16 of said Petition.

IX

The Respondent, further answering said Petition, and each and every material allegation thereof, asserts and alleges:

1. The said subpoena or subpoenas were not issued by the National Labor Relations Board, or any member thereof, upon application of any party to the said representation proceeding as required by Section 11 of the Labor Management Relations Act, 1947. The said subpoena or subpoenas show upon their face that the request for issuance was made by a person not a party to the said proceeding.

2. The Respondent duly filed a petition to revoke the said subpoena or subpoenas with the National Labor Relations Board, the Petitioner herein, as required by said Section 11 of said Act, and the said National Labor Relations Board has failed and refused to rule upon said petition to revoke.

3. The said Hearing Officer in said representation proceeding has no power, jurisdiction nor authority to rule upon petitions to revoke subpoenas, this power, jurisdiction and authority being reserved solely and exclusively to the National Labor Relations Board under Section 11 of said Act and is not delegable to any agent or agency of said Board.

4. Said subpoena or subpoenas were not issued according to law, in that there is no authority in the Labor Management Relations Act, 1047, or in any other law applicable to National Labor Relations Board representation hearings, or in any of the Federal Rules of Civil Procedure authorizing the issuance of subpoenas in National Labor Relations Board representation proceeding or enforcement by this Court of subpoenas framed in the alternative, calling for the preparation and production of an unsworn statement by an unidentified person which written statement would not be legal and proper evidence and would not be admissible.

5. On January 3, 1956, service was made of subpoenas duces tecum on Duval Jewelry Company, Duval Jewelry Company of Miami, Inc., Jenkins Jewelry Company and Jenkins and Sons, Inc., and on January 6, 1956, service was made of subpoenas upon Oliver A. Jenkins personally and as President of Duval Jewelry Company, all of said subpoenas requiring the production, at the same time, at a hearing on January 10, 1956, in a city 350 miles away from the principal offices of each of said corporations, of all records of statements showing all purchases made by and all sales made to or on behalf of some eighteen corporations operating sixteen retail jewelry stores throughout the State of Florida in the cities of Coral Gables, Miami, Jacksonville,

Tallahassee, DeLand, Ocala, Fort Lauderdale, Daytona Beach, Gainesville, West Palm Beach, Orlando, Tampa and St. Petersburg. To comply with said subpoenas would require the production of books and records, and thousands of individual cards, which would be in the hands of the National Labor Relations Board for an indefinite period of time and to compile statements showing data to be produced would require approximately eight weeks' time, since sales and purchases of the said several corporations involve thousands of transactions over a year's time. The Respondent asserts and alleges that there is only one retail store involved in the National Labor Relations Board proceeding; that said retail store is operated in the City of Miami, Florida, by Duval Jewelry Company of Miami, Inc., a Florida corporation and that there are no employees of any other corporation involved in the said National Labor Relations Board proceeding; that the National Labor Relations Board is attempting a mere "fishing expedition" into the records of all eighteen corporations, wherever located, for the purpose of trying to find some basis of asserting jurisdiction. The Respondent asserts, and the Petitioner well knows, that the Petitioner has no jurisdiction over the single retail store in the City of Miami, involved in the hearing.

6. Subpoena No. B-25989 requires the production of data not material or relevant to any issue in said representation hearing and seeks evidence which does not relate to any matter under investigation or in question in said hearing, to-wit: The number of shares of stock or other evidence of beneficial interest held by Respondent in eighteen different corporations, seventeen of which have no employees involved in the said representation hearing and have no

interest whatever in said hearing or in any issues which might be involved therein.

7. The said subpoenas are oppressive and unreasonable within the meaning of Rule 45 b of the Federal Rules of Civil Procedure in that said subpoenas attempt to require Respondent to appear and testify before Respondent has had a reasonable opportunity to compile data from records of the various corporations named in Paragraph 2 of this Petition to ascertain whether or not the corporations named as Employers in the said representation proceedings are or are not subject to the jurisdiction of the National Labor Relations Board and this Respondent asserts and alleges that it would be prejudicial to him, and would hamper him in preparation for said hearing, as president of said corporations, to require him to appear and testify in said hearing until he has had an opportunity to compile the data necessary to show that the said corporations named as Employers in said representation proceedings are or are not subject to the jurisdiction of the National Labor Relations Board. The said subpoenas required the appearance of Respondent at a hearing in a city 350 miles away from Respondent's principal offices and principal place of business within less than three working days from time of service of said subpoenas. Respondent asserts and alleges that the preparation of necessary data and checking of the records necessary to show facts referred to above would require approximately eight weeks.

Wherefore, having fully answered said Petition, Respondent respectfully prays that the Court will

(1) Deny the prayers of said Petition;

(2) Enter an order quashing said subpoena or subpoenas.

Respectfully submitted this 1st day of March, 1956.

HAMILTON & BOWDEN
By /s/ Theo Hamilton
(Theo Hamilton)
Counsel for Respondent

Address of Counsel for Respondents:

Hamilton & Bowden
401 Smith Building
Jacksonville 2, Florida

CERTIFICATE OF SERVICE

I hereby certify that I have this 1st day of March, 1956, filed the foregoing Answer in this Court and served a copy thereof by registered United States Mail upon the following:

National Labor Relations Board
Washington, D. C.

Lloyd R. Fraker, Esq.
Chief Law Officer
Tenth Region
National Labor Relations Board
528 Peachtree-Seventh Building
Atlanta, Georgia

Allen Sinsheimer, Jr., Esq.
Attorney
Tenth Region
National Labor Relations Board
Croton Hotel
7326 Collins Avenue
Miami Beach, Florida

/s/ Theo Hamilton
(Theo Hamilton)
of Counsel for Respondent

ORDER QUASHING SUBPOENAS

On April 3, 1956 ORDER QUASHING SUBPOENAS was filed in Case Nos. 6759-M-Civil; 6760-M-Civil; 6761-M-Civil; 6762-M-Civil and 6763-M-Civil, and appear in the words and figures as follows:

(CAPTION OMITTED)

This matter comes before me to enforce compliance with subpoenas ad testificandum and duces tecum issued preparatory to a National Labor Relations Board representation hearing. The subpoenas in question were directed to the above-named Respondents in these causes, who are also co-respondents in the National Labor Relations Board Case No. 10-RC-3333. The question of the validity and propriety of the subpoenas came on to be heard before the Court on the 2nd day of March, 1956, pursuant to 29 U.S.C.A. § 161, and the Court, having heard argument of counsel and hav-

ing examined the very able briefs submitted subsequent to the hearing by both sides, is of the opinion that the subpoenas sought to be enforced in these causes should be quashed for the following reasons.

From the face of the subpoenas duces tecum (Exhibit "8" attached to the Petition in each of these causes) it is clear that they are unreasonable, burdensome, and oppressive. They were issued on the 30th day of December, 1955, and directed to persons in Jacksonville, Florida. They required the production of voluminous books and records essential in the operation of the Respondent's businesses, on the 10th day of January, 1956, at a representation hearing in Miami, Florida, located some 350 miles from Jacksonville, Florida. The extreme shortness of time within which the Respondents had to gather and produce their many records becomes quite apparent when it is appreciated that not only is the gathering of the records time-consuming, but in addition a great deal of time would be required by the Respondents to copy certain essential parts of the subpoenaed records in order that their respective businesses would not suffer because of the absence of the books and records. Subpoenas duces tecum requiring the production of books and records essential in the operation of a business should provide ample time for the business to prepare for the absence of those books and records. Patently no such time was provided herein. For that reason the subpoenas duces tecum should be quashed.

A more serious question arises over the validity of the issue of the subpoenas. Section 161 of Title 29, *U.S.C.A.* provides ". . . The Board, or any member thereof, shall upon application of any party to such proceedings (repre-

sentation hearings or unfair labor practice hearings), forthwith issue to such *party* subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in such proceeding or investigation requested in such application . . ." (Emphasis supplied).

Nowhere does Congress place any new meaning to the term "party" as used in the said Section 161 but the National Labor Relations Board in its Rules and Regulations (29 C.F.R. § 102.8) attempts to originate a new concept in Anglo-American jurisprudence by attempting to make its Regional Directors a "party" in all proceedings in their respective regions. Congress nowhere has given the Board the power to enlarge by rule-making the clear-meaning terms employed in the statute in question, nor does the statute contemplate any "Board" actions except to enforce the Board's findings. Nowhere in the Common Law is there any basis for a construction of the word "party" to include persons directly associated with the "disinterested" tribunal before which tribunal both sides (here union and management) in an adversary proceeding are submitting, or are about to submit, their causes. The term "party" does have a universally accepted meaning and the attempt of the Board (the tribunal) to enlarge that meaning by rule to include its Regional Directors is in my opinion a nullity.

In the cases at bar the subpoenas in question (both ad testificandum and duces tecum) were issued pursuant to the request of one Frank E. Hamilton, Attorney for John C. Getreu, as Regional Director of the National Labor Relations Board. Inasmuch as the subpoenas in question were not issued upon application of a "party" to the representation proceedings before the National Labor Relations Board

hearing officer, those subpoenas were not, in my opinion, issued according to law and should be quashed. It is, therefore

ORDERED AND ADJUDGED that the subpoenas sought to be enforced herein (Civil cases No. 6759-M; 6760-M; 6761-M; 6762-M; and 6763-M) be and the same are hereby quashed.

DONE AND ORDERED in Chambers at Miami, Florida, this 30th day of March, 1956.

EMETT C. CHOATE
UNITED STATES DISTRICT JUDGE

NOTICE OF APPEAL

On May 14, 1956 NOTICE OF APPEAL by National Labor Relations Board was filed in the words and figures as follows:

United States District Court
For The Southern District of Florida
Miami Division

National Labor Relations Board,
Appellant;
v.
Civil No. 6759-M

Duval Jewelry Company of Miami, Inc.,
A Corporation,
Appellee.

National Labor Relations Board,
Appellant,
v. Civil No. 6760-M

Duval Jewelry Company, A Corporation,
Appellee.

National Labor Relations Board,
Appellant,
v. Civil No. 6761-M

Jenkins and Sons, Inc., A Corporation,
Appellee.

National Labor Relations Board,
Appellant,
v. Civil No. 6762-M

Jenkins Jewelry Company, A Corporation,
Appellee.

National Labor Relations Board,
Appellant,
v. Civil No. 6763-M

Oliver A. Jenkins,
Appellee.

NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Notice is hereby given that the National Labor Relations Board, appellant in the above cases, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the "Order Quashing Subpoenas," entered in the above-captioned proceedings on March 30, 1956.

/s/ Marcel Mallet-Prevost
Marcel Mallet-Prevost
Assistant General Counsel

NATIONAL LABOR
RELATIONS BOARD

Dated at Washington, D. C.
this day of May, 1956.

CLERK'S CERTIFICATE

United States of America,
Southern District of Florida, ss:

I, JULIAN A. BLAKE, Clerk of the United States District Court, in and for the Southern District of Florida, and as the legal custodian of the records and files of said Court, do hereby certify that the foregoing pages numbered from 1 to 157, inclusive, contain a true, full and complete copy of all such portions of the record, proceedings, and evidence in causes styled:

National Labor Relations Board, an Administrative Agency of the Federal Government
- vs -
Duval Jewelry Company of Miami, Inc., a corporation, Case No. 6759-M - Civil;

National Labor Relations Board, an Administrative Agency of the Federal Government
- vs -
Duval Jewelry Company, a corporation
Case No. 6760 - M - Civil;

National Labor Relations Board, an Administrative Agency of the Federal Government
- vs -
Jenkins and Sons, Inc., a corporation
Case No. 6761 - M - Civil;

National Labor Relations Board, an Administrative Agency of the Federal Government
- vs -
Jenkins Jewelry Company, a corporation
Case No. 6762 - M - Civil;

and

National Labor Relations Board, an Administrative Agency of the Federal Government
- vs -
Oliver A. Jenkins
Case No. 6763 - M - Civil.

as appear upon the records and files of my office that have been designated by written directions of the appellant to be included in this record on appeal.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Court at Miami, Florida, on this the 11th day of September, A. D. 1956.

JULIAN A. BLAKE
As Clerk of the United States District Court in and for the Southern District of Florida.

By EARLE F. SPRIGG
— Chief Deputy Clerk —

(SEAL)

Minute entry of argument and submission

January 7, 1957

[Omitted in printing.]

In the United States Court of Appeals for the Fifth Circuit

No. 16180

NATIONAL LABOR RELATIONS BOARD, APPELLANT

v.

DUVAL JEWELRY COMPANY OF MIAMI, INC., ET AL., APPELLEES

Appeal from the United States District Court for the Southern District of Florida

Opinion

(April 2, 1957)

Before RIVES, TUTTLE and BROWN, *Circuit Judges.*

RIVES, Circuit Judge: The National Labor Relations Board applied to the district court for orders to enforce certain subpoenas duces tecum and ad testificandum which the Board claimed to have issued pursuant to Section 11 (1) of

the National Labor Relations Act.[1] The jurisdiction of the district court was based on Section 11 (2) of the

[1] "§ 161. *Investigatory powers of Board.*

"For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by sections 159 and 160 of this title—

"Documentary evidence summoning witnesses and taking testimony

"(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. The Board, or any member thereof, shall upon application of any party to such proceedings, forthwith issue to such party subpenas requiring the production of any evidence in his possession or under his control, such person may petition the Board to revoke, and the Board shall revoke, such subpena if in its opinion the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpena does not describe with sufficient particularity the evidence whose production is required. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any

Act.[2] The district court "quashed" the subpoenas upon the grounds, (1) that they were unreasonable, burdensome and oppressive and (2) that they were not issued upon application of a "party" to the proceedings before the Board. It failed to pass upon a third ground to the effect that the
163 applications for enforcement were premature because the Board had not itself, under Section 11 (1) [footnote (1), *supra*], considered and ruled on petitions to revoke each of said subpoenas. If the third ground is good, then there has been no such final administrative action as is prerequisite to judicial review or enforcement,[3] and, as a matter of law, there has been no contumacy or refusal to obey a subpoena." Section 11 (2) [Footnote (2), *supra*]. At the threshold, therefore, we give consideration to the third ground.

Each and all of the respondents, appellees, had filed with the National Labor Relations Board petitions to revoke the subpoenas together with requests for permission to file briefs and present oral arguments in support of their petitions. The Board, calling attention to Section 102.58 (c) of its
164 Rules, 29 C. F. R., § 102.58 (c),[4] refused to entertain

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Territory or possession thereof, at any designated place of hearing." Title 29, U. S. C. A.

[2] "Court aid in compelling production of evidence and attendance of witnesses:

"(2) In case of contumacy or refusal to obey a subpena issued to any person, any district court of the United States or the United States courts of any Territory or possession, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof." Title 29, U. S. C. A. § 161 (2)

[3] See 42 Am. Jur., Public Administrative Law, Sec. 194.

[4] "(c) Applications for subpenas may be filed in writing by any party, with the regional director if made prior to hearing, or with the hearing officer if made at the hearing. Applications for subpenas may be made ex parte. The regional director or the hearing officer, as the case may be, shall forthwith grant the subpenas requested. Any person subpenaed, if he does not intend to comply with the subpena, shall, within 5 days after the date of service of the subpena, petition in writing to revoke the subpena. Such petition shall be filed with the regional director who may either rule upon it or refer it for ruling to the hearing officer: *Provided, however*, That if the evidence called for is to be produced at a hearing and the hearing has opened, the petition to revoke shall be filed with the hearing officer. Notice of the filing of petitions to revoke shall be promptly given by the regional director or hearing officer, as the case may be, to

the petitions. The hearing officer undertook to deny the petitions to revoke. The respondents did not request "special permission of the Board" to appeal.[5]

One of the subpoenas directed to appellee Oliver Jenkins was a subpoena ad testificandum, as to which there appears no provision in the Act for a petition to revoke [see Section 11 (1), Footnote (1), *supra*], and hence the application for its enforcement was not premature on that ground.

All of the other subpoenas were subpoenas duces tecum and the petitions to revoke, while not couched in the language of the statute, sufficiently raised the point of relevancy, that is, that "the evidence whose production is required does not relate to any matter under investigation or any matter in question in such proceedings." Section 11 (1), Footnote (1), *supra*. As to the subpoenas duces tecum, then, the primary question is whether the Act empowers the Board to delegate to hearing officers the power to pass upon such petitions to revoke.

We think that that question is answered in the negative by the carefully worded provisions of Section 11 (1)
165 of the Act, Footnote (1), *supra*. There the gradations in authority are explicitly delimited. "The Board, or its duly authorized agents or agencies" are given access to and the right to copy evidence. Upon the application of any party, "the Board, or any member thereof" is required "forthwith" to *issue* subpoenas. At that stage there is no discretion. However, any person served with a subpoena duces tecum "may petition *the Board* to revoke, and *the Board* shall revoke such subpoena if in *its* opinion" etc. [Emphasis supplied.]

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the party at whose request the subpena was issued. The regional director or the hearing officer, as the case may be, shall revoke the subpena if, in his opinion, the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpena does not describe with sufficient particularity the evidence whose production is required. The regional director or the hearing officer, as the case may be, shall make a simple statement of procedural or other grounds for his ruling. The petition to revoke, any answer filed thereto, and any ruling thereon shall not become part of the record except upon the request of the party aggrieved by the ruling. Persons compelled to submit data or evidence are entitled to retain or, on payment of lawfully prescribed costs, to procure copies or transcripts of the data or evidence submitted by them." 29 C. F. R. § 102.58 (c).

[5] "Unless expressly authorized by these Rules and Regulations, rulings by the regional director and by the hearing officer shall not be appealed directly to the Board except by special permission of the Board, but shall be considered by the Board when it reviews the entire record." Section 102.57 (c) of the Board's Rules, 29 C. F. R. 102.57 (c).

It may be, as stated in *N. L. R. B.* v. *Pesante*, S. D. Calif., 119 F. Supp. 444, 450, 451, 452, that the legislative history of the Act further supports such construction. We think, however, that the language itself of Section 11 (1) of the Act is plain, and that a different construction is not authorized by any other part of the Act nor by the Act as a whole.

The Seventh Circuit's remarks about petitions to revoke in *N. L. R. B.* v. *John S. Barnes Corp.*, 178 F. 2d 156, 160, were necessarily dicta as it does not appear that any such petition was filed in that case.

An administrative remedy under which any person served with a subpoena duces tecum may seek protection from the Board itself to make certain that the evidence is described with sufficient particularity and is relevant to the inquiry should not, we believe, prove unduly burdensome to the Board. If it does the remedy lies with Congress, not with the courts.

In most cases, methods less burdensome to the respond-
166 ents than subpoenas duces tecum are available to the Board, such as the right of "the Board, or its duly authorized agents or agencies" to have access to and to copy any evidence, supplemented if need be by the use of subpoenas ad testificandum, required to be issued upon the application of any party.

The reasoning of the Supreme Court in *Cudahy Packing Co.* v. *Holland*, 315 U. S. 357, 363, is highly persuasive that the Board has no authority to delegate its power to revoke a subpoena:

> "Unlimited authority of an administrative officer to delegate the exercise of the subpoena power is not lightly to be inferred. It is a power capable of oppressive use, especially when it may be indiscriminately delegated and the subpoena is not returnable before a judicial officer. Under the present Act, the subpoena may, as in this case, be used to compel production at a distant place of practically all of the books and records of a manufacturing business, covering considerable periods of time. True, there can be no penalty incurred for contempt before there is a judicial order of enforcement. But the subpoena is in form an official command, and even though improvidently issued it has some coercive tendency, either because of ignorance of their rights on the part of those whom it purports to command or their natural respect for what appears to be an official command, or because of their reluctance to test the subpoena's validity by litigation. All these

are cogent reasons for inferring an intention of Congress not to give unrestricted authority to delegate the subpoena power which it has in terms granted only to the responsible head of the agency." 315 U. S. at pp. 363–364.

167 Nothing in the later case of *Fleming* v. *Mohawk Co.*, 331 U. S. 111, seems to us to lead toward a different construction of the Act now under consideration.[6]

Under the Act, we think that the Board's jurisdiction to pass on petitions to revoke subpoenas duces tecum is original, not appellate, that the denial of the petitions by the hearing officer was a mere nullity, and that the respondents were not required to request "special permission of the Board" to appeal. The petitions to revoke were addressed to and filed with the Board itself, and until the Board has passed upon the petitions one way or the other, there is no "contumacy or refusal to obey a subpoena" [see 11 (2) of the Act, Footnote (2), *supra*], and the matter of the enforcement of the subpoenas is not ripe for consideration of the court. We hold, therefore, that the district court should have declined to rule upon the enforcement of the subpoenas duces tecum.[7]

The subpoena ad testificandum directed to appellee Oliver Jenkins is not claimed to be oppressive or burdensome.[8]

168 Was it properly quashed because not issued upon the application of a "party" to the proceedings before the Board? The subpoena was sought in a representation proceeding brought under Section 9 (c) of the Act, 29 U. S. C. A. 159 (c) (1).[9] The labor organization and the employer are usually

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[6] See the discussion of the Mohawk Case in N. L. R. B. v. Pesante, S. D. Calif., 119 F. Supp. 444, 454, 455.

[7] It should be noted that we are not passing upon the authority as to subpoenas duces tecum of a trial examiner or hearing officer in an unfair labor practice case. Representation proceedings, as distinguished from unfair labor practice cases, are somewhat removed from the purview of the Administrative Procedure Act, 5 U. S. C. A. 1001, et seq. Section 1004 specifically excepts agency hearings involving "the certifications of employee representatives" from those provisions applicable to cases of "adjudication," including, we think, the provisions of Section 1005 (c) dealing with agency subpoenas. Compare N. L. R. B. v. Anchor Rome Mills, 5th Cir., 197 F. 2d 447.

[8] In any event, courts can usually remove the oppression or burden without quashing the entire subpoena. N. L. R. B. v. Anchor Rome Mills, 5th Cir., 197 F. 2d 447, 450; Jackson Packing Co. v. N. L. R. B., 5th Cir., 204 F. 2d 842, 844.

[9] "(c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

"(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of

adversely interested in such a proceeding. The proceeding is, however, an "investigation." [10] "The employer is, in theory at least, not much concerned, since the employees are to choose their representative unhindered." *N. L. R. B.* v. *Whittier Mills Co.*, 5th Cir., 111 F. 2d 474, 478. The Board is charged with the responsibility of conducting the representation investigation, and the express terms of the statute authorize the Board to use subpoenas in aid of its investigations.[11] Section 102.8 of the Board's Rules and Regulations, 29 C. F. R., Sec. 102.8, 1956 Supp., defines "party" as including "the regional director in whose region the proceeding is pending," [12] though we do not consider that important to a decision of the present question. The language of the statute authorizing the use of subpoenas in investigations, while requiring their issuance upon the application of any "party," may appear to be conflicting, but the purpose is clear.

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employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in subsection (a) of this section, or (ii) assert that the individual or labor organization which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in subsection (a) of this section; or

"(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in subsection (a) of this section; the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof." 29 U. S. C. A. § 159 (c) (1).

[10] Inland Empire District Council v. Millis, 325 U. S. 697, 706; N. L. R. B. v. National Mineral Co., 7th Cir., 134 F. 2d 424, 426.

[11] Section 11 of the Act, 29 U. S. C. A. 161, Footnote 1, supra. N. L. R. B. v. Anchor Rome Mills, 5th Cir., 197 F. 2d 447, 449.

[12] "§ 102.8 *Party.* The term 'party' as used in this part shall mean the regional director in whose region the proceeding is pending, and any person named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any Board proceeding, including, without limitation, any person filing a charge or petition under the act, any person named as respondent, as employer, or as party to a contract in any proceeding under the act, and any labor organization alleged to be dominated, assisted, or supported in violation of section 8 (a) (1) or 8 (a) (2) of the act; but nothing in this part shall be construed to prevent the Board or its designated agent from limiting any party to participate in the proceedings to the extent of his interest only." 29 C. F. R., 1956 Supp.

Contrary to the district court in *N. L. R. B.* v. *Pesante, supra,* 119 F. Supp. at p. 457, we can see no objection to the Board member furnishing the subpoenas under his signature to the Regional Director to be used by the Director in such investigations as required. We think that the district court erred in declining to enforce the subpoena ad testificandum directed to Oliver Jenkins, and in not declining to rule upon the enforcement of the subpoenas duces tecum. One-sixth of the cost of appeal is taxed against the appellees, and the other five-sixths against the appellant. The judgment is reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed and Remanded.

170 In the United States Court of Appeals for the Fifth Circuit

No. 16180

NATIONAL LABOR RELATIONS BOARD

v.

DUVAL JEWELRY COMPANY OF MIAMI, INC., ET AL.

Judgment

April 2, 1957

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court for further proceedings not inconsistent with the opinion of this Court;

It is further ordered and adjudged that the appellant, National Labor Relations Board, be condemned to pay five-sixths of the costs of this cause in this Court; and that the appellees, Duval Jewelry Company of Miami, Inc., and others, be condemned, in solido, to pay one-sixth of the costs of this cause in this Court, for all of which execution may be issued out of the said District Court.

* * * * *

171 In the United States Court of Appeals for the Fifth Circuit

[File endorsement omitted.]
[Title omitted.]

Motion of the National Labor Relations Board for modification of opinion

Filed April 13, 1957

On April 2, 1957 this Court handed down its opinion in the subject case, sustaining the District Court's denial of enforcement of the subpenas *duces tecum* and overruling its refusal to enforce the subpena *ad testificandum*. The opinion concludes with the statement that: "One-sixth of the cost of appeal is taxed against the appellees, and the other five-sixths against the appellant." The Board respectfully requests that this sentence be deleted from the opinion, for the following reasons:

1. 28 U. S. C., Section 2412 (a) provides: "The United States shall be liable for fees and costs only when such liability is expressly provided for by Act of Congress." Accordingly, this Court has held that: "The United States is not liable for costs except when such liability is expressly provided for
172 by an Act of Congress." *United States* v. *Patterson*, 206 F. 2d 345, 348, and authorities cited therein. See also *U. S.* v. *Poling Russell, Inc.*, 212 F. 2d 184, 185–186 (C. A. 2).

2. Nothing in the National Labor Relations Act, as amended, or in any other statute, expressly authorizes the taxation of costs against the National Labor Relations Board. Moreover, since the Board brought this action in its official capacity, it is clear that, for purposes of this suit, the Board constitutes the United States, within the meaning of 28 U. S. C., Sec. 2412 (a). Cf. *Ewing* v. *Gardner*, 341 U. S. 321; *Walling* v. *Frank Adam Elec. Co.*, 163 F. 2d 277, 283 (C. A. 8); *Walling* v. *Norfolk Southern Ry. Co.*, 162 F. 2d 95, 96 (C. A. 4).

3. Therefore, we submit that the Board in this suit is immune from the imposition of costs against it. See *Charles T. Douds, Regional Director of the Second Region of the N. L. R. B.* v. *Local 1250, Retail Wholesale Department Store Union of America, CIO*, No. 164, October Term 1948, C. A. 2, wherein the Second Circuit, after sustaining respondent's appeal from an order punishing it for violating a Section 10 (1) injunction,

denied respondent's motion for taxation of costs against the Board's Regional Director.[1]

Wherefore, it is respectfully requested that the Court delete that portion of its opinion relating to imposition of costs.

(S) Stephen Leonard,
STEPHEN LEONARD,
Associate General Counsel,
National Labor Relations Board.

APRIL 1957.

173 [Certificate of Service omitted in printing.]

174 In the United States Court of Appeals for the Fifth Circuit

No. 16180

NATIONAL LABOR RELATIONS BOARD, APPELLANT

v.

DUVAL JEWELRY COMPANY OF MIAMI, INC., ET AL., APPELLEES

UPON MOTION FOR MODIFICATION OF OPINION

Order modifying opinion

May 6, 1957

Before RIVES, TUTTLE and BROWN, *Circuit Judges.*

Per curiam:

Upon motion of the appellant, the following sentence is deleted from the last paragraph of the opinion: "One-sixth of the cost of appeal is taxed against the appellees, and the other five-sixths against the appellant." 28 U. S. C. A. 2412 (a); 29 U. S. C. A. 153 (a); Ewing v. Gardner, 341 U. S. 321; United States v. Patterson, 5th Cir., 206 F. 2d 345, 348; Walling v. Norfold Southern Ry. Co., 4th Cir., 162 F. 2d 95, 96; Compare N. L. R. B. v. Red Arrow Freight Lines, 5th Cir., 193 F. 2d 979, 981; N. L. R. B. v. Remington Rand, Inc., 2nd Cir., 130 F. 2d 919, 937.

* * * * *

175 [Clerk's Certificate in foregoing transcript omitted in printing.]

[1] It may be noted that appellees here did not even request that costs be assessed against the Board.

No. 234

October Term, 1957

[Title omitted.]

Order allowing certiorari

October 14, 1957

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.